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HAROLD B. WILLEY,

IN THE

Supreme Court of the United States

October Term, 1953

No. ~~689~~ 32

STATE OF CALIFORNIA on relation of EDMUND G. BROWN, Attorney General, and ROBERT C. KIRKWOOD, State Controller,

Plaintiff and Petitioner,

vs.

ST. LOUIS UNION TRUST COMPANY, a corporation organized under the laws of the State of Missouri,

Defendant and Respondent.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF.

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IN THE

Supreme Court of the United States

October Term, 1953

No. .....

STATE OF CALIFORNIA on relation of EDMUND G. BROWN, Attorney General, and ROBERT C. KIRKWOOD, State Controller,

Plaintiff and Petitioner,

vs.

ST. LOUIS UNION TRUST COMPANY, a corporation organized under the laws of the State of Missouri,

Defendant and Respondent.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Earl Warren, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the United States:

NOW COMES THE STATE OF CALIFORNIA, on relation of Edmund G. Brown, its Attorney General, and Robert C. Kirkwood, its State Controller, and petitions for a Writ of Certiorari directed to the St. Louis Court of Appeals of the State of Missouri to review and reverse the judgment of that Court reversing the Judgment of the Circuit Court of St. Louis County, Missouri, in favor of petitioner and against respondent in the amount of five thousand twenty-three and 61/100 dollars ($5,-

023.61), including interest, as inheritance tax on the death of one Mary Agnes Rogers out of a revocable trust of intangible personal property created by her during her lifetime, of which trust respondent was and is trustee.

Jurisdiction.

Jurisdiction arises out of Title 28, Sections 2101-4, U. S. Code, Rules 38 and 38½, Rules of the Supreme Court of the United States. The decision of the St. Louis Court of Appeals was rendered September 15, 1953 [RA 6],[1] reversing the trial court judgment in favor of petitioner. The motion for rehearing in the St. Louis Court of Appeals was filed by Petitioner and denied October 16, 1953 [RA 6]. A petition for hearing in the Supreme Court of Missouri was filed and denied on the 14th day of December, 1953 [RS 33]. Thereafter, the St. Louis Court of Appeals stayed its mandate to the trial court [RA 7] on or about the 9th day of January, 1954, to permit the filing of this Petition for Writ of Certiorari in this Court, which Petition is being filed within the ninety (90) days provided by Rule 38, Rules of the Supreme Court of the United States.

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[1]"RA" is intended as a reference to the record of the St. Louis Court of Appeals. The record of the Supreme Court of Missouri will be referred to as "RS." The record of the Circuit Court of St. Louis County will be referred to as "RC." The pages of the records prepared by the Clerks of the St. Louis Court of Appeals and the Missouri Supreme Court were not numbered by those Clerks, and have been numbered by Petitioner in pen and ink. References herein are to the pen and ink numbers. If these records are printed by the Clerk of the United States Supreme Court, it is requested that this pagination will in some way be preserved in the printed record so that Petitioner's references to the record will be intelligible.

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Relators.

Robert C. Kirkwood, Controller of the State of California, is joined with the Attorney General of California as co-relator because of the provisions of California Revenue and Taxation Code, Section 14350, effective September 9, 1953, quoted herein amongst "STATUTES INVOLVED" and discussed in the accompanying brief. Fred N. Howser, who was Attorney General of California when the action below was commenced and acted as relator there, has been replaced as Attorney General of California by Edmund G. Brown, co-relator here.

Statutes Involved.

United States Constitution, Article IV, Section 1:

"Section 1. Full Faith and Credit shall be given in each State to the Public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

United States Constitution, 14th Amendment, Section 1:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

California Revenue and Taxation Code:

"§30. The courts of this State shall recognize and enforce liabilities for taxes lawfully imposed by any other state, or the political subdivisions thereof, which extends a like comity to this State.

"§31. The Attorney General or an appropriate official of any political subdivision of this State may bring suits in the courts of other states to collect taxes legally due this State or any political subdivision thereof. The officials of other states which extend a like comity to this State are empowered to sue for the collection of such taxes in the courts of this State. A certificate by the secretary of state under the great seal of the state that such officers have authority to collect the tax is conclusive evidence of such authority. This section does not apply to Parts 8 and 9 of this code.

"§14350. The Controller may bring suits in the courts of other states to collect inheritance taxes payable under this part. An official of another state which extends a like comity to this State may sue for the collection of similar taxes in the courts of this State. A certificate by the secretary of state of another state, under the great seal of that state, that an official thereof has authority to collect its death taxes is conclusive evidence of the authority of such official in any suit for the collection of such taxes in any court of this State.

"§14501. At or prior to the time of the appointment of the probate appraiser or appraisers pursuant to Section 605 of the Probate Code, the superior court having jurisdiction in probate of the estate of any decedent, or a judge of that court, shall designate and appoint an inheritance tax appraiser to ascertain and submit a report to the court on the following:

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(a) The clear market value of the property included in each transfer subject to this part from the decedent to any person sharing in the estate, whether the property transferred is in the estate or not.

(b) The amount of tax, if any, which is due and payable on each transfer.

(c) Such other facts regarding the tax as will assist the court in the determination of the tax.

"§14502. Upon his designation and appointment the inheritance tax appraiser has:

(a) Jurisdiction to require the attendance before him of the executor, administrator, any person interested in the estate, or any other person who he may have reason to believe possesses knowledge of the estate, of any property transferred by the decedent by a transfer subject to this part, or of any facts that will aid the appraiser or the court in the determination of the tax.

(b) All the powers of a referee of the superior court.

"§14508. On the day that the report is filed, or on the next succeeding judicial day, the clerk of the superior court shall give notice of the filing of all persons interested by causing a notice to be posted at the courthouse in the county where the court holds its sessions, and shall mail a copy of the notice to the Controller and to each person chargeable with any tax in the report who has appeared in the probate proceeding.

"§14651. The superior court which has acquired jurisdiction in probate of the estate of any decedent shall hear and determine in the probate proceedings all questions relative to any tax imposed by this part on each transfer subject to this part from the

decedent to any person sharing in the estate, whether the property transferred is in the estate or not.

"§14652. The superior court of the county in which a decedent who was a resident of this State resided at the time of his death has jurisdiction to hear and determine all questions relative to any tax imposed by this part or any transfer made by the decedent where the decedent either (a) leaves no estate or (b) leaves an estate in which the property transferred is not included and the transferee does not share.

"§16123.5. The Controller may bring suits in the courts of other states to collect gift taxes payable under this part. An official of another state which extends a like comity to this State may sue for the collection of similar taxes in the courts of this State. A certificate by the secretary of state of another state, under the great seal of that state, that an official thereof has authority to collect its gift or other transfer taxes is conclusive evidence of the authority of such official in any suit for the collection of such taxes in any court of this State." (Sections 14350 and 16123.5 added by Statutes of 1953, Chapter 1313.)

California Political Code:

"§3671e. The courts of this State shall recognize and enforce liabilities for taxes lawfully imposed by other States which extend a like comity to this State.

The Attorney General is hereby empowered to bring suits in the courts of other States to collect taxes legally due this State. The officials of other States which extend a like comity to this State are empowered to sue for the collection of such taxes in the courts of this State. A certificate by the Sec-

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retary of State under the great seal of the State that such officers have authority to collect the tax shall be conclusive evidence of such authority."

Massachusetts General Laws of 1932, Chapters 65, 65a:

"§30. The probate court having jurisdiction of the settlement of the estate of the decedent shall, subject to appeal as in other cases, hear and determine all questions relative to the tax imposed by this chapter, or by the corresponding provisions of earlier laws, and the commissioner shall represent the commonwealth in any such proceedings. If the court finds any tax remains due, it shall order the executor, administrator or trustee to pay the same, with interest and costs, and execution shall be awarded against the goods and estate of the deceased in the hands of the executor, administrator or trustee, or, if it appears that there are no such goods or estate in his hands, against the goods and estate of the executor, administrator or trustee, as if for his own debt; but the administrators, executors, trustees and grantees mentioned in this chapter shall be personally liable only for such taxes as shall be payable while they continue in the said offices or have title as such grantees respectively.

"§31. Upon petition of the commissioner the probate court shall, after such notice to the owners of any real estate or separate parcel thereof as said court shall order, determine the amount of taxes imposed by this chapter and by corresponding provisions of earlier laws which have become payable, and of interest on said taxes, for which such real estate or separate parcel thereof is charged with a lien after such determination said commissioner may collect said taxes and interest by sale in the manner provided by chapter sixty for the collection of taxes by sale by a collector of taxes, so far as applicable.

"§32. The commissioner shall commence proceedings for the recovery of any of the taxes imposed by this chapter or by corresponding provisions of earlier laws within six months after the same become payable; and also whenever the judge of a probate court certifies to him that the final account of an executor, administrator or trustee has been filed in such court, and that the settlement of the estate is delayed because of the non-payment of said tax. The probate court shall so certify upon the application of any heir, legatee or other person interested therein. Whenever the circumstances of a case require, the probate court may extend the time for payment of said tax, with or without interest. Any taxes assessed under this chapter or corresponding provisions of earlier laws, which are unpaid and uncollectible, may be abated by the appellate tax board on the recommendation of the attorney general and the commissioner at any time after the expiration of five years from the date when the same became payable.

"§33. Taxes imposed by this chapter and by corresponding provisions of earlier laws may be recovered by the commissioner in an action of contract brought in the name of the commonwealth, or by an information in equity brought in the supreme judicial court by the attorney general at the relation of the commissioner. In a proceeding under this section for the collection of taxes imposed by this chapter, the determination by the commissioner under section twenty-seven of the amount of the tax shall be final as to such amount; but an executor, administrator, trustee, grantee, donee or survivor may show, in any proceeding brought against him under this section, any facts which would entitle him to an abatement under section twenty-seven, and a judgment or decree shall be entered for the amount of the tax so deter-

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mined less the amount proved to have been assessed without authority of law, together with interest and costs. If upon an information brought hereunder the court shall find that any tax remains due, it shall order the executor, administrator, trustee, grantee, donee, or survivor to pay the same, with interest and costs, and may award execution therefor in the manner and form provided in section thirty.

"§34. Penalties and forfeitures incurred under this chapter may be recovered by the commissioner in an action of contract brought in the name of the commonweatlh, or by an information in equity brought in the supreme judicial court by the attorney general at the relation of the commissioner."

Missouri Revised Statutes of 1949, Title X, Chapter 145:

"Sec. 145.150. 1. The probate court which grants letters testamentary or of administration, either original or ancillary, on the estate of any decedent, shall have jurisdiction to determine the amount of the tax provided for in this chapter and the person, persons, association, institution or corporation liable therefor, and to determine any question which may arise in connection therewith, and to do any act in relation thereto which is authorized by law to be done by such court in other matters or proceedings coming within its jurisdiction.

2. Such court or the judge thereof in vacation shall immediately upon the filing of the inventory and appraisement of the estate of a decedent, examine the same, and if it is apparent, in the opinion of the said court or judge, that such estate is not subject to the tax provided for in this law, such finding and opinion shall be entered of record in said court, and thereupon the provisions of section

145.210 shall become inoperative as to the holders of funds or other property thereof, and there shall be no further proceedings relating to such tax, unless upon the application of interested parties the existence of other property or an erroneous appraisement be shown.

3. If it appears that said estate may be subject to such tax, it shall be the duty of the court to set a day for the hearing and determining the amount of said tax and to cause notice thereof to be given in the same time and manner and to the same parties as is hereinafter provided for appraisers, or the court, before determining such matters, may of its own motion, or on the application of any interested person, including the director of revenue, the prosecuting attorney or attorney general, appoint some qualified tax-paying citizen of the county, who is not executor, administrator or beneficially interested in said estate or the attorney for any of such parties, as appraiser to appraise and fix the clear market value of any property, estate or interest therein, or income therefrom which is subject to the payment of a tax under the provisions of this chapter.

4. Every such appraiser shall make and subscribe, and file with the court appointing him, an oath that he will faithfully and impartially discharge his duties as such appraiser and that he will appraise all the property, estate, interest therein or income therefrom involved in the proceeding in which he is appointed at its clear market value and shall forthwith fix a time and place for hearing the evidence and shall file notice thereof with the court appointing him not less than ten days prior to the date so fixed and shall also give notice by mail to all interested persons whose address he may have, always including the director of of revenue and the prosecuting attorney of the county.

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"Sec. 145.160. 1. The appraiser shall appraise all property, estate, assets, interest or income at its clear market value and he is hereby authorized to issue subpoenas and compel the attendance before him of witnesses and the production of books, records, documents, papers and all other material evidence, to administer oaths and to take the testimony of all witnesses under oath.

2. He shall make report of his appraisement to the court in writing and shall return the testimony of the witnesses and all other evidence and such other facts in relation thereto as the court may by its order require, and such report shall be made within twenty days after the appointment of such appraiser, unless the court, for good and sufficient cause, by order gives such appraiser further time in which to report; provided, when the estate consists of personal property only, the prosecuting attorney may, with the consent of the director of revenue, agree with the parties liable to pay any tax, upon the amount of the same, and the court, if it approves such agreement, shall enter judgment accordingly and no appraiser shall be appointed.

"Sec. 145.170. 1. Any interested person, including the director of revenue, attorney general or prosecuting attorney of the county may file exceptions to the report of the appraiser within thirty days after the date same is filed, specifically pointing out his or their objection thereto, and such exception shall be determined by the court in a summary manner.

2. Any person aggrieved by the judgment of the court as to the amount of liability for the tax may appeal to the court having jurisdiction of appeals from said court in ordinary civil actions, and in case of appeal the appellant shall be required to give bond

to the state in double the amount of the tax, interest, penalty and costs involved, conditioned to pay all taxes, interest and penalties assessed and costs taxed by the appellate court.

"Sec. 145.310. If any tax shall be due under the provisions of this chapter and no administration has been had in this state on the estate of decedent and no proceedings are pending in this state in which the amount of said tax may be fixed or the lien therefor enforced, any person interested in the property or estate may file an affidavit with the probate court of the county wherein the property or estate, or the greater part thereof, is situated, setting forth a description thereof and the clear market value thereof and the names of the persons, associations or corporations liable for the tax thereon, and an appraiser shall be appointed and the tax fixed by said court as herein provided. However, the probate court of any county in which administration on any such estate should be granted may, on its own motion, appoint such an appraiser."

(Current Law: The law in effect at the date of death of decedent involved herein was substantially the same, and is found in Missouri Revised Statutes of 1939, Chapter 1, Article 21.)

California Code of Civil Procedure, Section 395, provides in part, as follows:

"In all other cases, except as in this section otherwise provided, and subject to the power of the court to transfer actions or proceedings as provided in this title, the county in which the defendants, or some of them, reside at the commencement of the action, is the proper county for the trial of the action. If the action be for injury to person, or to personal

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property, or for death from wrongful act, or negligence, either the county where the injury occurs, or where the injury causing death occurs, or the county in which the defendants, or some of them, reside at the commencement of the action, shall be a proper county for the trial of the action. When a defendant has contracted to perform an obligation in a particular county, either the county where such obligation is to be performed, or in which the contract in fact was entered into, or the county in which the defendant, or any such defendant, resides at the commencement of the action, shall be a proper county for the trial of an action founded on such obligation, and the county in which such obligation is incurred shall be deemed to be the county in which it is to be performed unless there is a special contract in writing to the contrary. If none of the defendants reside in the State, or, if residing in the State, and the county in which they reside is unknown to the plaintiff, the action may be tried in any county which the plaintiff may designate in his complaint, and if the defendant is about to depart from the State, such action may be tried in any county where either of the parties reside, or where service is had. If any person is improperly joined as a defendant, or has been made a defendant solely for the purpose of having the action tried in the county, city and county, township, city or town where he resides, his residence must not be considered in determining the proper place for the trial of the action."

Opinion Below.

The opinion below is found at ..... Mo. App. ..... (260 S. W. 2d 821), and also at page RA 13 *et seq.* of the record.

Statement of Facts.

The decedent involved herein, Mary Agnes Rogers, during her lifetime and on July 8, 1936, executed a revocable trust whereby she transferred to St. Louis Union Trust Company certain intangible personal property, upon trust to pay her the income therefrom for life, and, at her death, to distribute the corpus to certain named beneficiaries. Thereafter, and on June 14, 1945, she died in Los Angeles, California. Her estate was probated in the Superior Court of Los Angeles County, California, as a domiciliary estate. A Federal Estate Tax was imposed upon her estate, including said revocable trust, in the amount of five thousand five hundred ninety-four and 26/100 dollars ($5,594.26), and the California Probate Court, after procedures prescribed by California law, made an order fixing California inheritance tax on her estate, including said trust, in the amount of six thousand two hundred thirty and 96/100 dollars ($6,230.96). Her Administrator paid said Federal Estate Tax and paid one thousand eight hundred eighty-one and 21/100 dollars ($1,881.21) on account of said California inheritance tax, which exhausted the assets in his hands, leaving a balance in the amount of four thousand three hundred forty-nine and 75/100 dollars ($4,349.75) unpaid on said California inheritance tax. There were no persons or property subject to process of the Courts of California for the collection of this deficiency, and Petitioner consequently filed the instant suit in the Circuit Court of St. Louis County, Missouri, against Respondent here and individual defendants, and secured judgment for said deficiency, plus interest, in the total amount of five thousand twenty-three and 61/100 dollars ($5,023.61) against respondent. Respondent then appealed to the Supreme

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Court of Missouri, which transferred the case to the St. Louis Court of Appeals for decision. That Court reversed the Circuit Court, review of which decision by the United States Supreme Court is now sought by Petitioner. Petitioner believes there is no dispute about the foregoing facts, all of which may be gleaned from the first few pages of the opinion of the St. Louis Court of Appeals [RA 13 *et seq.*]. After said decision, Petitioner moved for rehearing in the St. Louis Court of Appeals, arguing violation of its rights under the United States Constitution [RA 12]. The motion was denied [RA 6]. Thereafter, Petitioner moved for hearing by the Supreme Court of Missouri [RS 3], which motion was denied [RS 33].

Questions Presented by This Petition.

I.

May the Missouri Court, while conceding that foreign taxing statutes may be enforced in Missouri, and conceding that decedent concerned was domiciled in California at the time of her death, and that the intangible personal property in her trust was subject to California inheritance tax, arbitrarily refuse, nevertheless, to enforce the California inheritance tax law on the ground that that law does not provide a transitory cause of action?

II.

In order to determine whether or not the Missouri Court has given full faith and credit to the Statutes of California, and whether or not Missouri has given to the citizens of California the privileges and immunities given to the citizens of other states, and whether or not Missouri has given the equal protection of its laws to the citizens

of California, and whether or not the Missouri court has deprived California of property without due process of law, must not the United States Supreme Court itself examine the California inheritance tax law and determine the transitory or non-transitory character of the cause of action provided by that law?

III.

Does the California inheritance tax law provide a transitory cause of action?

Reasons for Granting the Writ.

I.

Thirty-one states, either by statute or judicial decision, now permit enforcement of foreign tax laws in their courts. The decision of the Missouri court that the California inheritance tax law does not provide a transitory cause of action will seriously impair California's ability to enforce its inheritance tax law in all of these states. The opinion has been carried by the various tax reporting services, and will undoubtedly be used against Petitioner in future litigation in other states.

II.

The case is one of which the United States Supreme Court could, in its discretion, have taken original jurisdiction, and Petitioner urges that, as a sovereign state of the United States, it is entitled to have the Court at least review its case.

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WHEREFORE, your Petitioner prays that a Writ of Certiorari be granted, and that the judgment of the St. Louis Court of Appeals be reversed.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1953.

No. .....

STATE OF CALIFORNIA on relation of EDMUND G. BROWN, Attorney General, and ROBERT C. KIRKWOOD, State Controller,

Plaintiff and Petitioner,

vs.

ST. LOUIS UNION TRUST COMPANY, a corporation organized under the laws of the State of Missouri,

Defendant and Respondent.

BRIEF IN SUPPORT OF PETITION.

To the Honorable Earl Warren, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the United States:

This Brief adopts by reference the jurisdictional statement, the statement of the "statutes involved," "opinion below," "questions presented" and "reasons for granting the Writ" contained in the Petition for Writ of Certiorari as though fully set out and repeated here.

Summary of the Argument.

The California law establishes a transitory cause of action for collecting California inheritance tax. Missouri courts possess adequate machinery to and did in this case, prior to reversal of the trial court, adequately enforce the California inheritance tax law. The California inheritance tax is not a type of tax novel to the thought of the people of the State of Missouri, or abhorrent to its public policy, as Missouri levies a tax of the same type under a law setting up procedures similar to the California law. For the Missouri court to arbitrarily pronounce, nevertheless, that the California law does not provide a transitory cause of action, and therefore refuse to enforce the California law, is an unconstitutional refusal to give full faith and credit to the California statutes, a denial to the citizens of California of the privileges and immunities extended by Missouri to citizens of other states, a refusal by Missouri of equal protection of its laws to the people of California, and a deprivation of the property of California without due process of law.

ARGUMENT.

I.

California Law Provides a Transitory Cause of Action for Collection of California Inheritance Tax.

The opinion of the St. Louis Court of Appeals indicates that the trial court was correct in holding that decedent, Mary Agnes Rogers, died domiciled in California [RA 15], and that California could lawfully impose its inheritance tax on the intangible personal property in the revocable trust created by her with Respondent as trustee [RA 16 and 19]. The court approves its former decision in *Oklahoma Tax Commission v. Rodgers,* 238 Mo. App. 1115, 193 S. W. 2d 919, permitting enforcement of the Oklahoma income tax law by the courts of Missouri [RA 25 and 35], but refuses to enforce the California inheritance tax law because California, the Court says, has not provided a transitory cause of action for collection of its inheritance tax [RA 32]. This is true, the Court says, first because [RA 28]:

> "Without said Exhibit A and Exhibit B plaintiff would have been without evidence of the value of decedent's estate, especially her California assets and of the computation and assessment of inheritance tax. The admissions in plaintiff's brief, heretofore quoted, reveal that no machinery existed in Missouri to adjudicate such facts."

(The Exhibits A and B referred to are explained in the immediately preceding paragraph of the Opinion (quoted

in the note[1] below), and are referred to at RC 78 and 79 for insertion. They accompany the record loose and separately.)

But Petitioner was in very little need of proving value in the trial court, as Respondent admitted by its answer the allegations of Petitioner's Amended Petition in the trial court that Respondent had received and still held assets of the trust, worth as of the date of death of Mary Agnes Rogers the sum of ninety-seven thousand six hundred fourteen and 90/100 dollars ($97,614.90) (Amended Petition, pars. 7 and 9 [RC 7 and 8]; Answer thereto, pars. 3 and 5 [RC 51 and 52].) This accounts for all but five hundred thirty-seven and 37/100 dollars ($537.37) of the ninety-eight thousand one hundred fifty-two and 27/100 dollars ($98,152.27) net taxable estate. Certainly if value had been a substantial issue, Petitioner could have established it by deposition of its California appraiser and by testimony of St. Louis securities experts. Computation of the tax, of course, is a matter of simple arithmetic

---

[1]"The very necessity which confronted plaintiff and compelled the attempted use by plaintiff of various California court proceedings and orders as evidence in this case, brings to a focus the reasons for its inability to succeed herein. Plaintiff offered in evidence as its chief reliance in this case the June 24, 1947, judgment of its Superior Court (by a 'Court Commissioner' whose status and authority are not established in this record, but that issue is not before us) approving and confirming the report of its inheritance tax appraiser, finding that the market value of the property subject to inheritance tax is $98,152.27 and assessing and fixing the liabilities of named heirs [Ex. A]; and the account and report of its public administrator and petitioner for discharge, nothing for distribution, with order of August 9, 1948, approving said account and granting said petition [Ex. B]. Parenthetically, it might be noted that although a copy of the report of the Inheritance Tax Appraiser was attached to the petition as an exhibit, no authenticated copy of same was ever offered in evidence. However, some questions were asked concerning said report, whereby some of the contents thereof came into evidence."

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when value is established, consisting of application to the exemptions and rates fixed by the California statute to the value of the shares of the distributees. Respondent never contended in the court below, or in the trial court, that the tax was wrongly computed. Far from admitting in its brief in the court below that no machinery existed in Missouri to adjudicate such facts, Petitioner said in its brief [RA 39, p. 6 of the insertion]:

> "While there is obviously no Missouri *statutory* (emphasis added here) machinery for determining California inheritance tax, the issues of fact and law on which the ultimate rights of the parties to such a determination depend are common ones with which Missouri courts deal repeatedly, such as domicile, valuation of property, determining degrees of kinship, construction of instruments to determine shares or interests of the parties thereto, validity of obligations of the decedent claimed as deductions, etc. Of all the substantive points which might have affected appellant's rights, they chose to urge upon the trial court here only the issue of domicile. This, apparently, the trial court experienced no difficulty in resolving. Although the court did not and could not here repeat all the procedures followed by the California court in complying with the California *statutory* (emphasis added here) recipe for an inheritance tax determination, it is difficult to see, when the California court had complied with its own law, but where no attempt was made by it to assert a judgment *in personam* against persons against whom its process had not issued, and when appellants have had full opportunity to assert any substantive defenses in the trial court below, whose process had effectively issued against them, why the applicable law of both California and Missouri had not been properly complied with and applied by the trial court in rendering the judg-

ment appealed from. If such a procedure is new to Missouri courts, certainly it is only a step in the constant progress of American law from its ancient and insular rigidity to the point of becoming a law which will serve modern American society. And certainly it is a small step beyond the broad and enlightened rule of *State Tax Commission of Oklahoma v. Rogers* (1946), 238 Mo. Appeals 1115, 193 S. W. 2d 919."

In *State Tax Commission of Oklahoma v. Rogers,* 238 Mo. App. 1115, cited in the quotation above, the Missouri court enforces an order of the Oklahoma Tax Commission, although there was no Missouri statute providing for enforcement of an order of the Oklahoma Tax Commission. At RA 30, the opinion below quotes from *Tennessee Coal, Iron and Railroad Co. v. George,* 233 U. S. 354 at 359, as follows:

> "There are many cases where right and remedy are so united that the right cannot be enforced except in the manner and before the tribunal designated by the act. For the rule is well settled that 'where the provision for the liability is coupled with a provision for the special remedy, that remedy, that alone, must be employed.'"

But the court neglects to observe that this statement, while no doubt a correct generalization, is dictum, and that on the immediately succeeding page of the opinion the effective part of the decision of the United States Supreme Court appears, requiring the courts of Georgia to enforce under the full faith and credit clause a statute of Alabama limiting employers' defenses in cases of industrial injury, even though the Alabama statute provided expressly that it should be enforced in the courts of Alabama *and not*

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elsewhere. At 233 U. S. 360, the United States Supreme Court says:

> "The courts of the sister state trying the case would be bound to give full faith and credit to all those substantial provisions of the statute which inhered in the cause of action, or which named conditions on which the right to sue depend, but venue is no part of the right, and the state cannot create a transitory cause of action and at the same time destroy the right to sue on that cause of action, in any court having jurisdiction."

Atchison, Topeka & Santa Fe Railroad v. Sowers, 213 U. S. 55, is to the same effect.

The court below discusses the rule [RA 29] that courts may sometimes refuse to enforce Workmen's Compensation Acts of other states, but certainly foreign enforcement of a Workmen's Compensation claim is not comparable to the present situation. There the court would be called upon to enforce what is basically a tort claim, without extending the right to trial by jury, to receive hearsay evidence and to disregard the rule of contributory negligence. Even such acts may be enforced extraterritorially when they contain an alternate provision for enforcement by judicial action. (*Esteves v. Lykes Bros. Steamship Co.,* 74 F. 2d 364. Cert. Den. 295 U. S. 751.) In the present case, the factual issues are the same as Missouri courts must try every day in litigation under their own inheritance tax law, which is similar in all material respects to the California law. (Missouri Revised Statutes, 1949, Title X, Chapter 145, Section 145.150, Section 145.160, Section 145.170, Section 145.310, quoted herein among "Statutes Involved.")

The Massachusetts inheritance tax law is also similar in essentials to California inheritance tax law (Massachusetts General Laws 1932, Chapters 65-65A, Sections 30-34, quoted herein amongst "Statutes Involved.") Yet in *Massachusetts v. Missouri*, 308 U. S. 1, the Attorney General of Missouri asserted in argument to this court (308 U. S. at 13) that Massachusetts could enforce its inheritance tax law in Missouri courts, and the court relied on this assertion in deciding the case (308 U. S. at 20).

Secondly, the St. Louis Court of Appeals says the cause of action here is not transitory because [RA 31]:

> "We find on reading the California statutes that a remedy is prescribed, and that it must be pursued in a specifically designated California court; not in any court of any state, nor even in any Superior Court in California, but in a single Superior Court, namely, in 'the superior court which has acquired jurisdiction in probate of the estate of any decedent,' Section 14651, Rev. and Tax Code, or if there be no estate, the superior court of the county in which the decedent resided at the time of his death. Sec. 14652. By Sec. 14501, that specified court appoints an inheritance tax appraiser, who has 'all the powers of a referee of the superior court.' Sec. 14502. He files his report in the court, and the Clerk of the Superior Court gives notice 'by causing a notice to be posted at the courthouse in the county where the court holds its sessions,' etc. Sec. 14508. Ultimately, the court enters its judgment or order fixing liability for the tax. It is needless to recite other provisions, showing that the statute prescribes a remedy in a specified California Court."

But these California Revenue and Taxation Code sections are clearly only sections for laying venue in a California

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proceeding. (*Tenn. Coal Iron & Railroad Co. v. George*, 233 U. S. 354, quoted from above.) The sections were followed in the administration proceeding in the Estate of Mary Agnes Rogers in Los Angeles County. Certainly, reference of designated fact-finding duties to a referee is not a strange practice to Missouri courts, and the trial court here could have appointed a referee to perform the duties of the California inheritance tax appraiser if it had felt the need of one. Section 395 of the California Code of Civil Procedure provides, in part, as follows:

> "In all other cases, except as in this section otherwise provided, and subject to the power of the court to transfer actions or proceedings as provided in this title, the county in which the defendants, or some of them, reside at the commencement of the action, is the proper county for the trial of the action. If the action be for injury to person, or to personal property, or for death from wrongful act, or negligence, either the county where the injury occurs, or where the injury causing death occurs, or the county in which the defendants, or some of them, reside at the commencement of the action, shall be a proper county for the trial of the action. When a defendant has contracted to perform an obligation in a particular county, either the county where such obligation is to be performed, or in which the contract in fact was entered into, or the county in which the defendant, or any such defendant, resides at the commencement of the action, shall be a proper county for the trial of an action founded on such obligation, and the county in which such obligation is incurred shall be deemed to be the county in which it is to be performed unless there is a special contract in writing to the contrary. If none of the defendants reside in the

> State, or, if residing in the State, and the county in which they reside is unknown to the plaintiff, the action may be tried in any county which the plaintiff may designate in his complaint, and if the defendant is about to depart from the State, such action may be tried in any county where either of the parties reside, or where service is had. If any person is improperly joined as a defendant, or has been made a defendant solely for the purpose of having the action tried in the county, city and county, township, city or town where he resides, his residence must not be considered in determining the proper place for the trial of the action."

Following the reasoning of the St. Louis Court of Appeals, no California cause of action in tort or contract is transitory since California law has provided that each must be tried in a California County specified by this statutory recipe. No doubt every state in the Union has similar statutes laying venue for suits of various sorts, including suits for collection of inheritance tax and other taxes. Therefore, perhaps if the decision below is allowed to stand, no out-of-state cause of action of any sort may be enforced in Missouri.

The opinion below points out [RA 33] that California Political Code, Section 3671(e) (quoted herein in "Statutes Involved"), under authority of which this action was brought, is not a part of the inheritance tax law but is general, permitting action by the California Attorney General in other states for collection of taxes of all sorts. The court does not explain why this is significant. The California Political Code does not contain any tax law of consequence, almost all California taxing provisions having been removed to the Revenue and Taxation Code, and the section is meaningless if it does not refer to all taxes,

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including those levied under the Revenue and Taxation Code.

Furthermore, it is a settled rule of statutory construction in California that all the Codes are to be read together as part of one statute. (*In re Porterfield,* 28 Cal. 2d 91 at 100 (1946); *Guardianship of Thrasher,* 105 Cal. App. 2d 768 at 776 (1951).)

The opinion further points out [RA 33] that California Political Code, Section 3671(e) was removed from the Political Code and transferred to the Revenue and Taxation Code by the 1951 California Legislature, where it now appears as Sections 30 and 31 of that Code (quoted herein amongst quoted "Statutes Involved"), and that, as reenacted, it contains the language "This section does not apply to parts 8 and 9 of this Code," which parts contain California's Inheritance and Gift Tax laws. The court then says, of this statutory change [RA 34]:

> "However, it does indicate a recognition by the California legislature that it never had created in its inheritance tax law a right separate from a local remedy."

The court further says [RA 34]:

> "The present language of Sec. 31 can be construed as a withdrawal on the part of California of the comity formerly extended by it to other states, respecting suits for inheritance or gift taxes (if truly transitory, and not localized by union with a specified local remedy.) To this date, so far as we can ascertain from the cases, no sister state has successfully brought an action in California to collect an inheritance tax. Under the new California statute, it would appear that in the future no such suit would be entertained in a California court, and comity seems withdrawn."

In these statements, the court could not have been more wrong. It appears nowhere in the record, of course, but this brief writer knows that the bill which accomplished this change in the 1951 Legislature was accompanied by a companion bill to enact Revenue and Taxation Code, Section 14350, as follows:

> "The Controller may bring suits in the courts of other states to collect inheritance taxes payable under this part. An official of another state which extends a like comity to this State may sue for the collection of similar taxes in the courts of this State. A certificate by the secretary of state of another state, under the great seal of that state, that an official thereof has authority to collect its death taxes is conclusive evidence of the authority of such official in any suit for the collection of such taxes in any court of this State."

A similar Section 16123.5 was to be added to the Gift Tax law. These two bills were so designed because it was thought proper that the Controlier, who was in charge of intra-state administration of the inheritance and gift tax laws, with a separate legal staff independent of the California Attorney General, should be invested with the power of extraterritorial enforcement of these laws. The bill to enact Revenue and Taxation Code, Sections 14350 and 16123.5 was somehow sidetracked in the pressure of the legislative section, and failed of passage. A similar bill was, however, passed by the 1953 Legislature and appears in Chapter 1313, California Statutes of 1953. The section as enacted appears herein among "Statutes Involved."

Petitioner cannot cite a decision of a California reviewing court in which a judgment on a foreign inheritance

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tax liability was sustained, but, with Political Code, Section 3671(e) in effect, it would appear futile for any taxpayer to appeal such a judgment. In the period between the 1951 and 1953 legislation, there may have been some doubt on the subject, but certainly Revenue and Taxation Code, Section 31 does not prohibit suits on foreign inheritance taxes. It simply deprives the California Attorney General of authority to sue extraterritorially for California inheritance taxes, leaving no California officer with such authority expressly until the enactment of Revenue and Taxation Code, Section 14350, as aforesaid. However, Revenue and Taxation Code, Section 14761, in effect long before and after 1951, would appear by clear implication to authorize the California Controller to sue extraterritorially. Said section reads as follows:

> "§14761. Whenever he is cited as a party to any proceeding or action to determine any tax imposed by this part, or whenever he deems it necessary for the better enforcement of this part to secure evidence of the evasion of, or to commence or appear in any proceeding or action to determine, any such tax, the Controller may, with the consent and approval of the Attorney General:
>
> (a) Specially employ any attorney or other person *in or out of the State* (emphasis added) to act for or represent him on the State's behalf.
>
> (b) Incur any reasonable and necessary expense for an incident to the employment."

Petitioner strongly urges that the court below is in error in holding that the remedy provided by the California inheritance tax law is not transitory, and that such error constitutes a violation of California's rights under the United States Constitution.

II.

The Erroneous Decision of the Court Below Constitutes an Invasion of the Rights of Petitioner Under the United States Constitution.

If the decision of the St. Louis Court of Appeals that California's cause of action under its inheritance tax law is not transitory was arbitrary and erroneous, then Petitioner strongly urges that full faith and credit have not been given to its laws by the Missouri Court, as required by Article IV, Section 1, of the United States Constitution. Petitioner disclaims here, and disclaimed in the court below, any contention that the inheritance tax order of the California Probate Court was a judgment *in personam* entitled to full faith and credit in Missouri. But California's statutes, as well as its valid judgments *in personam*, are entitled to full faith and credit. (*Bradford Electric Co. v. Clapper*, 286 U. S. 145 at 155.) In *First National Bank of Chicago v. United Air Lines*, 342 U. S. 396, at 398, the United States Supreme Court says:

> "That Illinois is willing for its courts to try some out of state death actions is no reason for refusal to grant full faith and credit as to others."

And Petitioner's claim for inheritance tax under its inheritance tax law, which the court below concedes is justly due [RA 19], and which can hardly be said to be a novel type of law to a Missouri court (see *supra*, p. 25), is denied enforcement, not because Missouri public policy is against enforcement of foreign tax statutes [RA 25 and 35], but because the Missouri court insists, against California's strenuous objection, that California's law must be construed as non-transitory. This, after the

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Missouri trial court has very effectively, acceptably and with no apparent effort, applied the California law and rendered judgment thereon. Petitioner urges that, under the circumstances, the United States Supreme Court must itself review the Missouri court's decision, and, if it finds it erroneous, reverse it as denying full faith and credit to California's law.

Order of Travelers v. Wolfe, 331 U. S. 586;

John Hancock Insurance Co. v. Yates, 299 U. S. 178 at 183;

Milwaukee County v. White Company, 296 U. S. 268 (deemed applicable here although the case deals with a suit on a judgment *in personam* for taxes which the present case does not, because Missouri has no public policy against enforcement of foreign tax statutes).

The United States Supreme Court will itself decide, when the laws of two states conflict, to what extent the law of the foreign state must be given full faith and credit.

Alaska Packers Association v. Industrial Accident Commission, 294 U. S. 532 at 547;

Pacific Insurance Company v. Commission, 306 U. S. 493 at 502;

Magnolia Petroleum Company v. Hunt, 320 U. S. 430 at 443.

Petitioner further urges that if the decision of the court below is erroneous, the Missouri court has refused to give Petitioner the equal protection of its laws, and has denied to the citizens of California the privileges it extends to the citizens of Oklahoma, in violation of Section 1

of the 14th Amendment to the United States Constitution.

Kentucky Finance Corporation v. Paramount Exchange Corporation, 262 U. S. 544 at 550;

Laurence v. State Tax Commission, 286 U. S. 276 at 282;

McKnett v. St. Louis & San Francisco Railway Co., 292 U. S. 230 at 233.

Certainly the State of California, acting through its duly elected officers, must be considered as much a "person" within the meaning of the constitutional provision as the business corporation involved in the first cited case, and the Missouri courts should not be allowed arbitrarily to refuse to entertain suits brought by California while entertaining tax actions brought by other states. California had a vested interest in and right to possession of a fractional part of the trust corpus in Respondent's hands as of the date of death of trustor Mary Agnes Rogers. (*Estate of Stanford*, 126 Cal. 112.) The court below concedes [RA 16 and 19] that the trust corpus, being intangible personal property, had its situs in law in California, and that California could lawfully tax it. California cannot, of course, collect its tax without recourse to the courts of Missouri.

Therefore, in order to determine whether or not Missouri has unconstitutionally denied the citizens of California the equal protection of its laws and the privileges extended to citizens of other states, the United States Supreme Court must itself review the decision of the

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court below that California's cause of action for collection of inheritance tax is not transitory, and, if it is erroneous, as Petitioner submits that it is, reverse it.

Petitioner further urges that the erroneous decision of the court below has the effect of depriving California of its property without due process of law, in violation of said Section 1 of the 14th Amendment. As pointed out above, California had a vested interest in a fractional part of the trust corpus in Respondent's hands, which has its situs in the view of the law in California, but which is, nevertheless, unavailable to California without access to Missouri courts. A corporation is a "person" within the meaning of the "due process" clause.

Pierce v. Society of Sisters, 268 U. S. 510 at 535;

Grosjean v. American Press Co., 297 U. S. 233 at 244;

Connecticut General Life v. Johnson, 303 U. S. 77 at 80.

A fortiori, the State of California, representing all its citizens, must be a "person" entitled to the protection of the constitutional provision. Therefore, Missouri's judicial refusal of access to its courts is a violation of due process.

Brinkerhoff-Faris Co. v. Hill, 281 U. S. 673 at 682;

People v. Broad, 216 Cal. 1, cert. den. 287 U. S. 661.

Conclusion.

Petitioner believes it to be true that no inheritance tax was paid to the State of Missouri on the trust corpus involved herein (although it would be taxable under Missouri law if decedent Mary Agnes Rogers had died domiciled in Missouri. [See RC 155.] Certainly, if no tax was paid in Missouri, none will now be paid, since the court below holds this decedent to be domiciled in California. Hence, if the decision is allowed to stand, this substantial fund will have entirely escaped inheritance taxation, although the clearly expressed public policy of both states involved is that such funds should contribute to the cost of state government. Petitioner suggests that the court should take judicial notice, as a matter of common knowledge, of the fact that many people of substantial wealth move from other states to California on retirement. The proclivity of some of them to leave the bulk of their assets in some form or other in their state of origin makes it necessary for California inheritance tax officials frequently to seek access to foreign courts for collection of inheritance tax. If allowed to stand, the precedent established by the court below will seriously hamper California in its efforts to collect its revenue in many other states besides Missouri. Petitioner respectfully represents that, in the interest of the development of a more smoothly operating national union suitable to the modern age, the United States Supreme Court should grant certiorari, and should thereafter reverse the decision of the court below as arbitrary, archaic, insubstantial

and hyper-technical to such an extent that it violates the constitiutional rights of the State of California.

Respectfully submitted,

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IN THE

Supreme Court of the United States

October Term, 1954.

No. 32.

STATE OF CALIFORNIA on relation of Edmund G. Brown, Attorney General, and Robert C. Kirkwood, State Controller,

Plaintiff and Petitioner,

vs.

ST. LOUIS UNION TRUST COMPANY, a corporation organized under the laws of the State of Missouri,

Defendant and Respondent.

On Writ of Certiorari to the St. Louis Court of Appeals of the State of Missouri.

BRIEF FOR THE PETITIONER.

Opinion Below.

The opinion of the St. Louis Court of Appeals [R. 131-149] is reported at 260 S. W. 2d 821.

Jurisdiction.

Jurisdiction arises out of Title 28, Sections 2101-4, U. S. Code, Rules 38 and 38½, Rules of the Supreme Court of the United States. The decision of the St. Louis

Court of Appeals was rendered September 15, 1953 [R. 150], reversing the trial court judgment in favor of petitioner. The motion for rehearing in the St. Louis Court of Appeals was filed by petitioner and denied October 16, 1953 [R. 152]. A petition for hearing in the Supreme Court of Missouri was filed and denied on the 14th day of December, 1953 [R. 157]. Thereafter, the St. Louis Court of Appeals stayed its mandate to the trial court [R. 159] on or about the 9th day of January, 1954, to permit the filing of a Petition for Writ of Certiorari in this Court, which Petition was filed within the ninety (90) days provided by Rule 38, Rules of the Supreme Court of the United States. The Writ of Certiorari was granted by the Supreme Court of the United States on or about the 11th day of October, 1954.

Relators.

Robert C. Kirkwood, Controller of the State of California, is joined with the Attorney General of California as co-relator because of the provisions of California Revenue and Taxation Code, Section 14350, effective September 9, 1953, quoted herein amongst "STATUTES INVOLVED." Fred N. Howser, who was Attorney General of California when the action below was commenced and acted as relator there, has been replaced as Attorney General of California by Edmund G. Brown, co-relator here.

Questions Presented.

I.

May the Missouri Court, while conceding that foreign taxing statutes may be enforced in Missouri, and conceding that decedent concerned was domiciled in California at the time of her death, and that the intangible personal property in her trust was subject to California inheritance tax, arbitrarily refuse, nevertheless, to enforce the California inheritance tax law on the ground that that law does not provide a transitory cause of action?

II.

In order to determine whether or not the Missouri Court has given full faith and credit to the Statutes of California, and whether or not Missouri has given to the citizens of California the privileges and immunities given to the citizens of other states, and whether or not Missouri has given the equal protection of its laws to the citizens of California, and whether or not the Missouri court has deprived California of property without due process of law, must not the United States Supreme Court itself examine the California inheritance tax law and determine the transitory or non-transitory character of the cause of action provided by that law?

III.

Does the California inheritance tax law provide a transitory cause of action?

Statutes Involved.

United States Constitution, Article IV, Section 1:

"Section 1. Full Faith and Credit shall be given in each State to the Public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

United States Constitution, Fourteenth Amendment, Section 1:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

California Revenue and Taxation Code:

"§30. The courts of this State shall recognize and enforce liabilities for taxes lawfully imposed by any other state, or the political subdivisions thereof, which extends a like comity to this State.

"§31. The Attorney General or an appropriate official of any political subdivision of this State may bring suits in the courts of other states to collect taxes legally due this State or any political subdivision thereof. The officials of other states which extend a like comity to this State are empowered to sue for the collection of such taxes in the courts of this State. A certificate by the secretary of state under the great seal of the state that such officers

have authority to collect the tax is conclusive evidence of such authority. This section does not apply to Parts 8 and 9 of this code.

"§14350. The Controller may bring suits in the courts of other states to collect inheritance taxes payable under this part. An official of another state which extends a like comity to this State may sue for the collection of similar taxes in the courts of this State. A certificate by the secretary of state of another state, under the great seal of that state, that an official thereof has authority to collect its death taxes is conclusive evidence of the authority of such official in any suit for the collection of such taxes in any court of this state.

"§14501. At or prior to the time of the appointment of the probate appraiser or appraisers pursuant to Section 605 of the Probate Code, the superior court having jurisdiction in probate of the estate of any decedent, or a judge of that court, shall designate and appoint an inheritance tax appraiser to ascertain and submit a report to the court on the following:

(a) The clear market value of the property included in each transfer subject to this part from the decedent to any person sharing in the estate, whether the property transferred is in the estate or not.

(b) The amount of tax, if any, which is due and payable on each transfer.

(c) Such other facts regarding the tax as will assist the court in the determination of the tax.

"§14502. Upon his designation and appointment the inheritance tax appraiser has:

(a) Jurisdiction to require the attendance before him of the executor, administrator, any person interested in the estate, or any other person who he may have reason to believe possesses knowledge of the

estate, of any property transferred by the decedent by a transfer subject to this part, or of any facts that will aid the appraiser or the court in the determination of the tax.

(b) All the powers of a referee of the superior court.

"§14508. On the day that the report is filed, or on the next succeeding judicial day, the clerk of the superior court shall give notice of the filing to all persons interested by causing a notice to be posted at the courthouse in the county where the court holds its sessions, and shall mail a copy of the notice to the Controller and to each person chargeable with any tax in the report who has appeared in the probate proceedings.

"§14651. The superior court which has acquired jurisdiction in probate of the estate of any decedent shall hear and determine in the probate proceedings all questions relative to any tax imposed by this part on each transfer subject to this part from the decedent to any person sharing in the estate, whether the property transferred is in the estate or not.

"§14652. The superior court of the county in which a decedent who was a resident of this State resided at the time of his death has jurisdiction to hear and determine all questions relative to any tax imposed by this part on any transfer made by the decedent where the decedent either (a) leaves no estate or (b) leaves an estate in which the property transferred is not included and the transferee does not share.

"§16123.5. The Controller may bring suits in the courts of other states to collect gift taxes payable under this part. An official of another state which extends a like comity to this State may sue for the

collection of similar taxes in the courts of this State. A certificate by the secretary of state of another state, under the great seal of that state, that an official thereof has authority to collect its gift or other transfer taxes is conclusive evidence of the authority of such official in any suit for the collection of such taxes in any court of this State." (Secs. 14350 and 16123.5 added by Stats. of 1953, Chap. 1313.)

California Political Code:

"§3671e. The courts of this State shall recognize and enforce liabilities for taxes lawfully imposed by other States which extend a like comity to this State.

The Attorney General is hereby empowered to bring suits in the courts of other States to collect taxes legally due this State. The officials of other States which extend a like comity to this State are empowered to sue for the collection of such taxes in the courts of this State. A certificate by the Secretary of State under the great seal of the State that such officers have authority to collect the tax shall be conclusive evidence of such authority."

Massachusetts General Laws of 1932, Chapters 65, 65a:

"§30. The probate court having jurisdiction of the settlement of the estate of the decedent shall, subject to appeal as in other cases, hear and determine all questions relative to the tax imposed by this chapter, or by the corresponding provisions of earlier laws, and the commissioner shall represent the commonwealth in any such proceedings. If the court finds any tax remains due, it shall order the executor, administrator or trustee to pay the same, with interest and costs, and execution shall be awarded against the goods and estate of the deceased in the hands of the executor, administrator or trustee, or,

if it appears that there are no such goods or estate in his hands, against the goods and estate of the executor, administrator or trustee, as if for his own debt; but the administrators, executors, trustees and grantees mentioned in this chapter shall be personally liable only for such taxes as shall be payable while they continue in the said offices or have title as such grantees respectively.

"§31. Upon petition of the commissioner the probate court shall, after such notice to the owners of any real estate or separate parcel thereof as said court shall order, determine the amount of taxes imposed by this chapter and by corresponding provisions of earlier laws which have become payable, and of interest on said taxes, for which such real estate or separate parcel thereof is charged with a lien. After such determination said commissioner may collect said taxes and interest by sale in the manner provided by chapter sixty for the collection of taxes by sale by a collector of taxes, so far as applicable.

"§32. The commissioner shall commence proceedings for the recovery of any of the taxes imposed by this chapter or by corresponding provisions of earlier laws within six months after the same become payable; and also whenever the judge of a probate court certifies to him that the final account of an executor, administrator or trustee has been filed in such court, and that the settlement of the estate is delayed because of the non-payment of said tax. The probate court shall so certify upon the application of any heir, legatee or other person interested therein. Whenever the circumstances of a case require, the probate court may extend the time for payment of said tax, with or without interest. Any taxes assessed under this chapter or corresponding provisions of earlier laws, which are unpaid and uncollectible,

may be abated by the appellate tax board on the recommendation of the attorney general and the commissioner at any time after the expiration of five years from the date when the same became payable.

"§33. Taxes imposed by this chapter and by corresponding provisions of earlier laws may be recovered by the commissioner in an action of contract brought in the name of the commonwealth, or by an information in equity brought in the supreme judicial court by the attorney general at the relation of the commissioner. In a proceeding under this section for the collection of taxes imposed by this chapter, the determination by the commissioner under section twenty-seven of the amount of tax shall be final as to such amount; but an executor, administrator, trustee, grantee, donee or survivor may show, in any proceeding brought against him under this section, any facts which would entitle him to an abatement under section twenty-seven, and a judgment or decree shall be entered for the amount of the tax so determined less the amount proved to have been assessed without authority of law, together with interest and costs. If upon an information brought hereunder the court shall find that any tax remains due, it shall order the executor, administrator, trustee, grantee, donee, or survivor to pay the same, with interest and costs, and may award execution therefor in the manner and form provided in section thirty.

"§34. Penalties and forfeitures incurred under this chapter may be recovered by the commissioner in an action of contract brought in the name of the commonwealth, or by an information in equity brought in the supreme judicial court by the attorney general at the relation of the commissioner."

Missouri Revised Statutes of 1949, Title X, Chapter 145:

"Sec. 145.150. 1. The probate court which grants letters testamentary or of administration, either original or ancillary, on the estate of any decedent, shall have jurisdiction to determine the amount of the tax provided for in this chapter and the person, persons, association, institution or corporation liable therefor, and to determine any question which may arise in connection therewith, and to do any act in relation thereto which is authorized by law to be done by such court in other matters or proceedings coming within its jurisdiction.

2. Such court or the judge thereof in vacation shall immediately upon the filing of the inventory and appraisement of the estate of a decedent, examine the same, and if it is apparent, in the opinion of the said court or judge, that such estate is not subject to the tax provided for in this law, such finding and opinion shall be entered of record in said court, and thereupon the provisions of section 145.210 shall become inoperative as to the holders of funds or other property thereof, and there shall be no further proceedings relating to such tax, unless upon the application of interested parties the existence of other property or an erroneous appraisement be shown.

3. If it appears that said estate may be subject to such tax, it shall be the duty of the court to set a day for the hearing and determining the amount of said tax and to cause notice thereof to be given in the same time and manner and to the same parties as is hereinafter provided for appraisers, or the court, before determining such matters, may of its own motion, or on the application of any interested person, including the director of revenue, the prosecuting at-

torney or attorney general, appoint some qualified tax-paying citizen of the county, who is not executor, administrator or beneficially interested in said estate or the attorney for any of such parties, as appraiser to appraise and fix the clear market value of any property, estate or interest therein, or income therefrom which is subject to the payment of a tax under the provisions of this chapter.

4. Every such appraiser shall make and subscribe, and file with the court appointing him, an oath that he will faithfully and impartially discharge his duties as such appraiser and that he will appraise all the property, estate, interest therein or income therefrom involved in the proceeding in which he is appointed at its clear market value and shall forthwith fix a time and place for hearing the evidence and shall file notice thereof with the court appointing him not less than ten days prior to the date so fixed and shall also give notice by mail to all interested persons whose address he may have, always including the director of revenue and the prosecuting attorney of the county.

"Sec. 145.160. 1. The appraiser shall appraise all property, estate, assets, interest or income at its clear market value and he is hereby authorized to issue subpoenas and compel the attendance before him of witnesses and the production of books, records, documents, papers and all other material evidence, to administer oaths and to take the testimony of all witnesses under oath.

2. He shall make report of his appraisement to the court in writing and shall return the testimony of the witnesses and all other evidence and such other facts in relation thereto as the court may by its order require, and such report shall be made within twenty

days after the appointment of such appraiser, unless the court, for good and sufficient cause, by order gives such appraiser further time in which to report; provided, when the estate consists of personal property only, the prosecuting attorney may, with the consent of the director of revenue, agree with the parties liable to pay any tax, upon the amount of the same, and the court, if it approves such agreement, shall enter judgment accordingly and no appraiser shall be appointed.

"Sec. 145.170. 1. Any interested person, including the director of revenue, attorney general or prosecuting attorney of the county may file exceptions to the report of the appraiser within thirty days after the date same is filed, specifically pointing out his or their objection thereto, and such exception shall be determined by the court in a summary manner.

2. Any person aggrieved by the judgment of the court as to the amount of liability for the tax may appeal to the court having jurisdiction of appeals from said court in ordinary civil actions, and in case of appeal the appellant shall be required to give bond to the state in double the amount of the tax, interest, penalty and cost involved, conditioned to pay all taxes, interest and penalties assessed and costs taxed by the appellate court.

"Sec. 145.310. If any tax shall be due under the provisions of this chapter and no administration has been had in this state on the estate of decedent and no proceedings are pending in this state in which the amount of said tax may be fixed or the lien therefor enforced, any person interested in the property or estate may file an affidavit with the probate court of the county wherein the property or estate, or the greater part thereof, is situated, setting forth a de-

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scription thereof and the clear market value thereof and the names of the persons, associations or corporations liable for the tax thereon, and an appraiser shall be appointed and the tax fixed by said court as herein provided. However, the probate court of any county in which administration on any such estate should be granted may, on its own motion, appoint such an appraiser."

(Current Law: The law in effect at the date of death of decedent involved herein was substantially the same, and is found in Missouri Revised Statutes of 1939, Chapter 1, Article 21.)

California Code of Civil Procedure, Section 395, provides in part, as follows:

"In all other cases, except as in this section otherwise provided, and subject to the power of the court to transfer actions or proceedings as provided in this title, the county in which the defendants, or some of them, reside at the commencement of the action, is the proper county for the trial of the action. If the action be for injury to person, or to personal property, or for death from wrongful act, or negligence, either the county where the injury occurs, or where the injury causing death occurs, or the county in which the defendants, or some of them, reside at the commencement of the action, shall be a proper county for the trial of the action. When a defendant has contracted to perform an obligation in a particular county, either the county where such obligation is to be performed, or in which the contract in fact was entered into, or the county in which the defendant, or any such defendant, resides at the commencement of the action, shall be a proper county for the trial of an action founded on such obligation, and

the county in which such obligation is incurred shall be deemed to be the county in which it is to be performed unless there is a special contract in writing to the contrary. If none of the defendants reside in the State, or, if residing in the State, and the county in which they reside is unknown to the plaintiff, the action may be tried in any county which the plaintiff may designate in his complaint, and if the defendant is about to depart from the State, such action may be tried in any county where either of the parties reside, or where service is had. If any person is improperly joined as a defendant, or has been made a defendant solely for the purpose of having the action tried in the county, city and county, township, city or town where he resides, his residence must not be considered in determining the proper place for the trial of the action."

Statement of Facts.

The decedent involved herein, Mary Agnes Rogers, during her lifetime and on July 8, 1936, executed a revocable trust whereby she transferred to St. Louis Union Trust Company certain intangible personal property, upon trust to pay her the income therefrom for life, and, at her death, to distribute the corpus to certain named beneficiaries. Thereafter, and on June 14, 1945, she died in Los Angeles, California. Her estate was probated in the Superior Court of Los Angeles County, California, as a domiciliary estate. A Federal Estate Tax was imposed upon her estate, including said revocable trust, in the amount of five thousand five hundred ninety-four and 26/100 dollars ($5,594.26), and the California Probate

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Court, after procedures prescribed by California law, made an order fixing California inheritance tax on her estate, including said trust, in the amount of six thousand two hundred thirty and 96/100 dollars ($6,230.96). Her Administrator paid said Federal Estate Tax and paid one thousand eight hundred eighty-one and 21/100 dollars ($1,881.21) on account of said California inheritance tax, which exhausted the assets in his hands, leaving a balance in the amount of four thousand three hundred forty-nine and 75/100 dollars ($4,349.75) unpaid on said California inheritance tax. There were no persons or property subject to process of the Courts of California for the collection of this deficiency, and Petitioner consequently filed the instant suit in the Circuit Court of St. Louis County, Missouri, against Respondent here and individual defendants, and secured judgment for said deficiency, plus interest, in the total amount of five thousand twenty-three and 61/100 dollars ($5,023.61) against respondent. Respondent then appealed to the Supreme Court of Missouri, which transferred the case to the St. Louis Court of Appeals for decision. That Court reversed the Circuit Court, review of which decision by the United States Supreme Court is now sought by Petitioner. Petitioner believes there is no dispute about the foregoing facts, all of which may be gleaned from the first few pages of the opinion of the St. Louis Court of Appeals [R. 131 *et seq.*]. After said decision, Petitioner moved for rehearing in the St. Louis Court of Appeals, arguing violation of its rights under the United States

Constitution [R. 151]. The motion was denied [R. 152]. Thereafter, Petitioner moved for hearing by the Supreme Court of Missouri [R. 154], which motion was denied [R. 157].

Summary of the Argument.

The California law establishes a transitory cause of action for collecting California inheritance tax. Missouri courts possess adequate machinery to, and did in this case prior to reversal of the trial court, adequately enforce the California inheritance tax law. The California inheritance tax is not a type of tax novel to the thought of the people of the State of Missouri, or abhorrent to its public policy, as Missouri levies a tax of the same type under a law setting up procedures similar to the California law. For the Missouri court to arbitrarily pronounce, nevertheless, that the California law does not provide a transitory cause of action, and therefore refuse to enforce the California law, is an unconstitutional refusal to give full faith and credit to the California statutes, a denial to the citizens of California of the privileges and immunities extended by Missouri to citizens of other states, a refusal by Missouri of equal protection of its laws to the people of California, and a deprivation of the property of California without due process of law.

ARGUMENT.

I.

California Law Provides a Transitory Cause of Action for Collection of California Inheritence Tax.

The opinion of the St. Louis Court of Appeals indicates that the trial court was correct in holding that decedent, Mary Agnes Rogers, died domiciled in California [R. 133], and that California could lawfully impose its inheritance tax on the intangible personal property in the revocable trust created by her with Respondent as trustee [R. 134 and 136]. The court approves its former decision in *Oklahoma Tax Commission v. Rodgers*, 238 Mo. App. 1115, 193 S. W. 2d 919, permitting enforcement of the Oklahoma income tax law by the courts of Missouri [R. 141 and 148], but refuses to enforce the California inheritance tax law because California, the Court says, has not provided a transitory cause of action for collection of its inheritance tax [R. 146]. This is true, the Court says, first because [R. 144]:

> "Without said Exhibit A and Exhibit B plaintiff would have been without evidence of the value of decedent's estate, especially her California assets and of the computation and assessment of inheritance tax. The admissions in plaintiff's brief, heretofore quoted, reveal that no machinery existed in Missouri to adjudicate such facts."

[The Exhibits A and B referred to are explained in the immediately preceding paragraph of the Opinion (quoted in the note[1] below), and appear at R. 20 and 39.]

But Petitioner was in very little need of proving value in the trial court, as Respondent admitted by its answer the allegations of Petitioner's Amended Petition in the trial court that Respondent had received and still held assets of the trust, worth as of the date of death of Mary Agnes Rogers the sum of ninety-seven thousand six hundred fourteen and 90/100 dollars ($97,614.90) (Amended Petition, pars. 7 and 9 [R. 3 and 4]; Answer thereto, pars. 3 and 5 [R. 25].) This accounts for all but five hundred thirty-seven and 37/100 dollars ($537.37) of the ninety-eight thousand one hundred fifty-two and 27/100 dollars ($98,152.27) net taxable estate. Certainly if value had been a substantial issue, Petitioner could have established it by deposition of its California appraiser and by testimony of St. Louis securities experts. Computation of the

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[1]"The very necessity which confronted plaintiff and compelled the attempted use by plaintiff of various California court proceedings and orders as evidence in this case, brings to a focus the reasons for its inability to succeed herein. Plaintiff offered in evidence as its chief reliance in this case the June 24, 1947, judgment of its Superior Court (by a 'Court Commissioner' whose status and authority are not established in this record, but that issue is not before us) approvnig and confirming the report of its inheritance tax appraiser, finding that the market value of the property subject to inheritance tax is $98,152.27 and assessing and fixing the liabilities of named heirs [Ex. A]; and the account and report of its public administrator and petitioner for discharge, nothing for distribution, with order of August 9, 1948, approving said account and granting said petition [Ex. B]. Parenthetically, it might be noted that although a copy of the report of the Inheritance Tax Appraiser was attached to the petition as an exhibit, no authenticated copy of same was ever offered in evidence. However, some questions were asked concerning said report, whereby some of the contents thereof came into evidence."

tax, of course, is a matter of simple arithmetic when value is established, consisting of application to the exemptions and rates fixed by the California statute to the value of the shares of the distributees. Respondent never contended in the court below, or in the trial court, that the tax was wrongly computed. Far from admitting in its brief in the court below that no machinery existed in Missouri to adjudicate such facts, Petitioner said in its brief (not included in the printed record):

> "While there is obviously no Missouri *statutory* (emphasis added here) machinery for determining California inheritance tax, the issues of fact and law on which the ultimate rights of the parties to such a determination depend are common ones with which Missouri courts deal repeatedly, such as domicile, valuation of property, determining degrees of kinship, construction of instruments to determine shares or interests of the parties thereto, validity of obligations of the decedent claimed as deductions, etc. Of all the substantive points which might have affected appellant's rights, they chose to urge upon the trial court here only the issue of domicile. This, apparently, the trial court experienced no difficulty in resolving. Although the court did not and could not here repeat all the procedures followed by the California court in complying with the California *statutory* (emphasis added here) recipe for an inheritance tax determination, it is difficult to see, when the California court had complied with its own law, but where no attempt was made by it to assert a judgment *in personam* against persons against whom its process had not issued, and when appellants have had full opportunity to assert any substantive defenses in the trial court below, whose process had effectively issued against them, why the applicable

law of both California and Missouri had not been properly complied with and applied by the trial court in rendering the judgment appealed from. If such a procedure is new to Missouri courts, certainly it is only a step in the constant progress of American law from its ancient and insular rigidity to the point of becoming a law which will serve modern American society. And certainly it is a small step beyond the broad and enlightened rule of *State Tax Commission of Oklahoma v. Rodgers* (1946), 238 Mo. Appeals 1115, 193 S. W. 2d 919."

In *State Tax Commission of Oklahoma v. Rodgers,* 238 Mo. App. 1115, cited in the quotation above, the Missouri court enforces an order of the Oklahoma Tax Commission, although there was no Missouri statute providing for enforcement of an order of the Oklahoma Tax Commission. At R. 144, the opinion below quotes from *Tennessee Coal, Iron and Railroad Co. v. George,* 233 U. S. 354 at 359, as follows:

> "There are many cases where right and remedy are so united that the right cannot be enforced except in the manner and before the tribunal designated by the act. For the rule is well settled that 'where the provision for the liability is coupled with a provision for the special remedy, that remedy, that alone, must be employed.' "

But the court neglects to observe that this statement, while no doubt a correct generalization, is dictum, and that on the immediately succeeding page of the opinion the effective part of the decision of the United States Supreme Court appears, requiring the courts of Georgia to enforce under the full faith and credit clause a statute of Alabama limiting employers' defenses in cases of industrial injury,

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even though the Alabama statute provided expressly that it should be enforced in the courts of Alabama *and not elsewhere*. At 233 U. S. 360, the United States Supreme Court says:

> "The courts of the sister state trying the case would be bound to give full faith and credit to all those substantial provisions of the statute which inhered in the cause of action, or which named conditions on which the right to sue depend, but venue is no part of the right, and the state cannot create a transitory cause of action and at the same time destroy the right to sue on that cause of action, in any court having jurisdiction."

Atchison, Topeka & Santa Fe Railroad v. Sowers, 213 U. S. 55, is to the same effect.

The court below discusses the rule [R. 144] that courts may sometimes refuse to enforce Workmen's Compensation Acts of other states, but certainly foreign enforcement of a Workmen's Compensation claim is not comparable to the present situation. There the court would be called upon to enforce what is basically a tort claim, without extending the right to trial by jury, to receive hearsay evidence and to disregard the rule of contributory negligence. Even such acts may be enforced extraterritorially when they contain an alternate provision for enforcement by judicial action. (*Esteves v. Lykes Bros. Steamship Co.*, 74 F. 2d 364, cert. den., 295 U. S. 751.) In the present case, the factual issues are the same as Missouri courts must try every day in litigation under their own inheritance tax law, which is similar in all material respects to the California law. (Missouri Rev. Stats. 1949, Title X, Chap. 145, Secs. 145.150, 145.160, 145.170, 145.310, quoted herein among "Statutes Involved.")

The Massachusetts inheritance tax law is also similar in essentials to California inheritance tax law (Massachusetts Gen. Laws 1932, Chaps. 65-65A, Secs. 30-34, quoted herein amongst "Statutes Involved.") Yet in *Massachusetts v. Missouri*, 308 U. S. 1, the Attorney General of Missouri asserted in argument to this court (308 U. S. at 13) that Massachusetts could enforce its inheritance tax law in Missouri courts, and the court relied on this assertion in deciding the case (308 U. S. at 20).

Secondly, the St. Louis Court of Appeals says the cause of action here is not transitory because [R. 145]:

> "We find on reading the California statutes that a remedy is prescribed, and that it must be pursued in a specifically designated California court; not in any court of any state, nor even in any Superior Court in California, but in a single Superior Court, namely, in 'the superior court which has acquired jurisdiction in probate of the estate of any decedent,' Section 14651, Rev. and Tax Code, or if there be no estate, the superior court of the county in which the decedent resided at the time of his death. Sec. 14652. By Sec. 14501, that specified court appoints an inheritance tax appraiser, who has 'all the powers of a referee of the superior court.' Sec. 14502. He files his report in the court, and the Clerk of the Superior Court gives notice 'by causing a notice to be posted at the courthouse in the county where the court holds its sessions,' etc. Sec. 14508. Ultimately, the court enters its judgment or order fixing liability for the tax. It is needless to recite other provisions, showing that the statute prescribes a remedy in a specified California Court."

But these California Revenue and Taxation Code sections are clearly only sections for laying venue in a California

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proceeding. (*Tenn. Coal, Iron & Railroad Co. v. George*, 233 U. S. 354, quoted from above.) The sections were followed in the administration proceeding in the Estate of Mary Agnes Rogers in Los Angeles County. Certainly, reference of designated fact-finding duties to a referee is not a strange practice to Missouri courts, and the trial court here could have appointed a referee to perform the duties of the California inheritance tax appraiser if it had felt the need of one. Section 395 of the California Code of Civil Procedure provides, in part, as follows:

> "In all other cases, except as in this section otherwise provided, and subject to the power of the court to transfer actions or proceedings as provided in this title, the county in which the defendants, or some of them, reside at the commencement of the action, is the proper county for the trial of the action. If the action be for injury to person, or to personal property, or for death from wrongful act, or negligence, either the county where the injury occurs, or where the injury causing death occurs, or the county in which the defendants, or some of them, reside at the commencement of the action, shall be a proper county for the trial of the action. When a defendant has contracted to perform an obligation in a particular county, either the county where such obligation is to be performed, or in which the contract in fact was entered into, or the county in which the defendant, or any such defendant, resides at the commencement of the action, shall be a proper county for the trial of an action founded on such obligation, and the county in which such obligation is incurred shall be deemed to be the county in which it is to be performed unless there is a special contract in writing to the contrary. If none of the defendants reside in the State, or, if residing in the State, and the county in which they reside is unknown to the plaintiff, the

> action may be tried in any county which the plaintiff may designate in his complaint, and if the defendant is about to depart from the State, such action may be tried in any county where either of the parties reside, or where service is had. If any person is improperly joined as a defendant, or has been made a defendant solely for the purpose of having the action tried in the county, city and county, township, city or town where he resides, his residence must not be considered in determining the proper place for the trial of the action."

Following the reasoning of the St. Louis Court of Appeals, no California cause of action in tort or contract is transitory since California law has provided that each must be tried in a California County specified by this statutory recipe. No doubt every state in the Union has similar statutes laying venue for suits of various sorts, including suits for collection of inheritance tax and other taxes. Therefore, perhaps if the decision below is allowed to stand, no out-of-state cause of action of any sort may be enforced in Missouri.

The opinion below points out [R. 146, 7] that California Political Code, Section 3671(e) (quoted herein in "Statutes Involved"), under authority of which this action was brought, is not a part of the inheritance tax law but is general, permitting action by the California Attorney General in other states for collection of taxes of all sorts. The court does not explain why this is significant. The California Political Code does not contain any tax law of consequence, almost all California taxing provisions having been removed to the Revenue and Taxation Code, and the section is meaningless if it does not refer to all taxes, including those levied under the Revenue and Taxation Code.

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Furthermore, it is a settled rule of statutory construction in California that all the Codes are to be read together as part of one statute. (*In re Porterfield*, 28 Cal. 2d 91 at 100 (1946); *Guardianship of Thrasher*, 105 Cal. App. 2d 768 at 776 (1951).)

The opinion further points out [R. 147] that California Political Code, Section 3671(e) was removed from the Political Code and transferred to the Revenue and Taxation Code by the 1951 California Legislature, where it now appears as Sections 30 and 31 of that Code (quoted herein amongst quoted "Statutes Involved"), and that, as reenacted, it contains the language "This section does not apply to parts 8 and 9 of this Code," which parts contain California's Inheritance and Gift Tax laws. The court then says, of this statutory change [R. 148]:

> "However, it does indicate a recognition by the California legislature that it never had created in its inheritance tax law a right separate from a local remedy."

The court further says [R. 148]:

> "The present language of Sec. 31 can be construed as a withdrawal on the part of California of the comity formerly extended by it to other states, respecting suits for inheritance or gift taxes (if truly transitory, and not localized by union with a specified local remedy). To this date, so far as we can ascertain from the cases, no sister state has successfully brought an action in California to collect an inheritance tax. Under the new California statute, it would appear that in the future no such suit would be entertained in a California court, and comity seems withdrawn."

In these statements, the court could not have been more wrong. It appears nowhere in the record, of course, but this brief writer knows that the bill which accomplished this change in the 1951 legislature was accompanied by a companion bill to enact Revenue and Taxation Code, Section 14350, as follows:

> "The Controller may bring suits in the courts of other states to collect inheritance taxes payable under this part. An official of another state which extends a like comity to this State may sue for the collection of similar taxes in the courts of this State. A certificate by the secretary of state of another state, under the great seal of that state, that an official thereof has authority to collect its death taxes is conclusive evidence of the authority of such official in any suit for the collection of such taxes in any court of this State."

A similar section, 16123.5, was to be added to the Gift Tax Law. These two bills were so designed because it was thought proper that the Controller, who was in charge of intrastate administration of the inheritance and gift tax laws, with a separate legal staff independent of the California Attorney General, should be invested with the power of extraterritorial enforcement of these laws. The bill to enact Revenue and Taxation Code, Sections 14350 and 16123.5, was somehow sidetracked in the pressure of the legislative section, and failed of passage. A similar bill was, however, passed by the 1953 Legislature and appears in Chapter 1313, California Statutes of 1953. The section as enacted appears herein among "Statutes Involved."

Petitioner cannot cite a decision of a California reviewing court in which a judgment on a foreign inheritance

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tax liability was sustained, but, with Political Code, Section 3671(e) in effect, it would appear futile for any taxpayer to appeal such a judgment. In the period between the 1951 and 1953 legislation, there may have been some doubt on the subject, but certainly Revenue and Taxation Code, Section 31, does not prohibit suits on foreign inheritance taxes. It simply deprives the California Attorney General of authority to sue extraterritorially for California inheritance taxes, leaving no California officer with such authority expressly until the enactment of Revenue and Taxation Code, Section 14350, as aforesaid. However, Revenue and Taxation Code, Section 14761, in effect long before and after 1951, would appear by clear implication to authorize the California Controller to sue extraterritorially. Said section reads as follows:

> "§14761. Whenever he is cited as a party to any proceeding or action to determine any tax imposed by this part, or whenever he deems it necessary for the better enforcement of this part to secure evidence of the evasion of, or to commence or appear in any proceeding or action to determine, any such tax, the Controller may, with the consent and approval of the Attorney General:
>
> (a) Specially employ any attorney or other person *in or out of the State* (emphasis added) to act for or represent him on the State's behalf.
>
> (b) Incur any reasonable and necessary expense for an incident to the employment."

Petitioner strongly urges that the court below is in error in holding that the remedy provided by the California inheritance tax law is not transitory, and that such error constitutes a violation of California's rights under the United States Constitution.

II.

The Erroneous Decision of the Court Below Constitutes an Invasion of the Rights of Petitioner Under the United States Constitution.

If the decision of the St. Louis Court of Appeals that California's cause of action under its inheritance tax law is not transitory was arbitrary and erroneous, then Petitioner strongly urges that full faith and credit have not been given to its laws by the Missouri Court, as required by Article IV, Section 1, of the United States Constitution. Petitioner disclaims here, and disclaimed in the court below, any contention that the inheritance tax order of the California Probate Court was a judgment *in personam* entitled to full faith and credit in Missouri. But California's statutes, as well as its valid judgments *in personam*, are entitled to full faith and credit. (*Bradford Electric Co. v. Clapper*, 286 U. S. 145 at 155.) In *First National Bank of Chicago v. United Air Lines*, 342 U. S. 396, at 398, the United States Supreme Court says:

> "That Illinois is willing for its courts to try some out of state death actions is no reason for refusal to grant full faith and credit as to others."

And Petitioner's claim for inheritance tax under its inheritance tax law, which the court below concedes is justly due [R. 136], and which can hardly be said to be a novel type of law to a Missouri court (see *supra*, p. 21), is denied enforcement, not because Missouri public policy is against enforcement of foreign tax statutes [R. 141 and 148], but because the Missouri court insists, against California's strenuous objection, that California's law must be construed as non-transitory. This, after the Missouri trial court has very effectively, acceptably and with no apparent effort, applied the California law and rendered judgment thereon. Petitioner urges that, under

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the circumstances, the United States Supreme Court must itself review the Missouri court's decision, and, if it finds it erroneous, reverse it as denying full faith and credit to California's law.

Order of Travelers v. Wolfe, 331 U. S. 586;

John Hancock Insurance Co. v. Yates, 299 U. S. 178 at 183;

Milwaukee County v. White Company, 296 U. S. 268 (deemed applicable here although the case deals with a suit on a judgment *in personam* for taxes which the present case does not, because Missouri has no public policy against enforcement of foreign tax statutes).

The United States Supreme Court will itself decide, when the laws of two states conflict, to what extent the law of the foreign state must be given full faith and credit.

Alaska Packers Association v. Industrial Accident Commission, 294 U. S. 532 at 547;

Pacific Insurance Company v. Commission, 306 U. S. 493 at 502;

Magnolia Petroleum Company v. Hunt, 320 U. S. 430 at 443.

Petitioner further urges that if the decision of the court below is erroneous, the Missouri court has refused to give Petitioner the equal protection of its laws, and has denied to the citizens of California the privileges it extends to the citizens of Oklahoma, in violation of Section 1 of the Fourteenth Amendment to the United States Constitution.

Kentucky Finance Corporation v. Paramount Exchange Corporation, 262 U. S. 544 at 550;

Laurence v. State Tax Commission, 286 U. S. 276 at 282;

McKnett v. St. Louis & San Francisco Railway Co., 292 U. S. 230 at 233.

Certainly the State of California, acting through its duly elected officers, must be considered as much a "person" within the meaning of the constitutional provision as the business corporation involved in the first cited case, and the Missouri courts should not be allowed arbitrarily to refuse to entertain suits brought by California while entertaining tax actions brought by other states. California had a vested interest in and right to possession of a fractional part of the trust corpus in Respondent's hands as of the date of death of trustor Mary Agnes Rogers. (*Estate of Stanford*, 126 Cal. 112.) The court below concedes [R. 134 and 136] that the trust corpus, being intangible personal property, had its situs in law in California, and that California could lawfully tax it. California cannot, of course, collect its tax without recourse to the courts of Missouri.

Therefore, in order to determine whether or not Missouri has unconstitutionally denied the citizens of California the equal protection of its laws and the privileges extended to citizens of other states, the United States Supreme Court must itself review the decision of the court below that California's cause of action for collection of inheritance tax is not transitory, and, if it is erroneous, as Petitioner submits that it is, reverse it.

Petitioner further urges that the erroneous decision of the court below has the effect of depriving California of its property without due process of law, in violation of said Section 1 of the 14th Amendment. As pointed out above, California had a vested interest in a fractional part of the trust corpus in Respondent's hands, which has its situs in the view of the law in California, but which is, nevertheless, unavailable to California without access to

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Missouri Courts. A corporation is a "person" within the meaning of the "due process" clause.

Pierce v. Society of Sisters, 268 U. S. 510 at 535;

Grosjean v. American Press Co., 297 U. S. 233 at 244;

Connecticut General Life v. Johnson, 303 U. S. 77 at 80.

A fortiori, the State of California, representing all its citizens, must be a "person" entitled to the protection of the constitutional provision. Therefore, Missouri's judicial refusal of access to its courts is a violation of due process.

Brinkerhoff-Faris Co. v. Hill, 281 U. S. 673 at 682;

People v. Broad, 216 Cal. 1, cert. den. 287 U. S. 661.

Conclusion.

Petitioner believes it to be true that no inheritance tax was paid to the State of Missouri on the trust corpus involved herein although it would be taxable under Missouri law if decedent Mary Agnes Rogers had died domiciled in Missouri. [See R. 107.] Certainly, if no tax was paid in Missouri, none will now be paid, since the court below holds this decedent to be domiciled in California. Hence, if the decision is allowed to stand, this substantial fund will have entirely escaped inheritance taxation, although the clearly expressed public policy of both states involved is that such funds should contribute to the cost of state government. Petitioner suggests that the court should take judicial notice, as a matter of common knowledge, of the fact that many people of substantial wealth move from other states to California on

retirement. The proclivity of some of them to leave the bulk of their assets in some form or other in their state of origin makes it necessary for California inheritance tax officials frequently to seek access to foreign courts for collection of inheritance tax. If allowed to stand, the precedent established by the court below will seriously hamper California in its efforts to collect its revenue in many other states besides Missouri. Petitioner respectfully represents that, in the interest of the development of a more smoothly operating national union suitable to the modern age, the United States Supreme Court should reverse the decision of the court below as arbitrary, archaic, insubstantial and hyper-technical to such an extent that it violates the constitutional rights of the State of California.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1954.
No. 32.
(Formerly October Term, 1953, No. 639.)

STATE OF CALIFORNIA, on Relation of Edmund G. Brown, Attorney General, and Robert C. Kirkwood, State Controller,
Plaintiff and Petitioner,

vs.

ST. LOUIS UNION TRUST COMPANY, a Corporation Organized Under the Laws of the State of Missouri,
Defendant and Respondent.

ON PETITION FOR WRIT OF CERTIORARI.

BRIEF

For the Respondent in Opposition.

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BRIEF

For the Respondent in Opposition.

OPINION BELOW.

The opinion of the St. Louis Court of Appeals of the State of Missouri appears in the printed record (R. 131-149) and is reported in 260 S. W. 2d 821. It has not as yet been reported in the official reports of the Courts of Appeals of the State of Missouri. The denial by the Supreme Court of Missouri of the Application for Transfer from St. Louis Court of Appeals to Supreme Court of Missouri appears in the printed record (R. 157) and is not officially reported.

JURISDICTION.

Petitioner asserts that jurisdiction of this Court arises out of Title 28, Sections 2101-4, U. S. Code, Rules 38 and 38½, Rules of the Supreme Court of the United States. We find no jurisdictional relevancy in the cited provisions. Under them, this Court would have no jurisdiction. The only provision of the U. S. Code under which this Court could possibly have jurisdiction is 28 U. S. C. 1257 (3).

STATEMENT.

The State of California, at the relation of Fred N. Houser, its then Attorney General, filed suit in the Circuit Court of the County of St. Louis, State of Missouri, seeking recovery of inheritance taxes allegedly assessed on behalf of the State of California during the course of administration of the Estate of Mary Agnes Rogers in that State and allegedly due and unpaid. The defendants named in the Missouri action were the St. Louis Union Trust Company, a Missouri corporation, as Trustee under a certain indenture of trust created by decedent, Mary Agnes Rogers, and other residents of Missouri named as beneficiaries in said indenture of trust, and Cemetery Association of Missouri (R. 1-24).

Decedent, Mary Agnes Rogers, was originally a resident of Missouri (R. 133-134). During her lifetime, on July 8, 1936, she created a revocable trust, whereunder she transferred to St. Louis Union Trust Company as Trustee certain intangible personalty, reserving the income to herself for life and providing for distribution to certain named beneficiaries at her death (R. 81-87). During her later years she lived in California, and died there on June 14, 1945 (R. 133-134).

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Her will was filed for probate in the Superior Court of Los Angeles County, California, and her estate was administered by the Public Administrator of that county (R. 134, 137). Petitioner alleged that during the course of probate proceedings inheritance taxes were assessed in California, which taxes were determined by including the value of the assets of the Missouri trust estate as well as the property located within California (R. 132). Petitioner also alleged that during the course of administration the Public Administrator used the assets physically within California to pay expenses of administration and a Federal Estate Tax, leaving unpaid inheritance taxes in the amount of $4,349.75 (R. 132).

During the course of probate administration in California, none of the defendants were within California or in any way personally subject to the jurisdiction of its Courts (R. 137). Respondent St. Louis Union Trust Company during such period was, and still is, a Missouri corporation not qualified to do or doing business in California, and none of the assets comprising the trust estate were located within California (R. 137).

The petitioner predicated its original complaint solely upon the judgment entered by the California Court (R. 2-8). During the trial it changed its theory; but it was not made clear what its new theory consisted of.

The Trial Court dismissed as to all the defendants, except respondent, and found in favor of petitioner and against respondent for the relief prayed in the petition (R. 108). Respondent appealed to the Supreme Court of Missouri, which Court transferred the cause to the St. Louis Court of Appeals (R. 120-128). The St. Louis Court of Appeals reversed the decision of the Circuit Court, on two bases: first, that California had not created a cause

of action for the assessment and collection of inheritance taxes cognizable in Missouri Court, and, second, that petitioner had failed to introduce sufficient competent evidence to support whatever cause of action it had (R. 131-149). The petitioner then filed a motion for rehearing, or in the alternative, for transfer to the Supreme Court of Missouri (R. 151-152), which motion was denied October 16, 1953 (R. 152). Thereafter, petitioner filed an application in the Supreme Court of Missouri for transfer of the case from the St. Louis Court of Appeals to the Supreme Court of Missouri (R. 154-156); which application was denied December 14, 1953 (R. 157).

QUESTIONS INVOLVED.

Petitioner, on pages 15 and 16 of its Petition for Writ of Certiorari, sets out questions which it conceives to be involved in this cause. A reading of these questions in the light of the facts and after reading the opinion of the St. Louis Court of Appeals discloses their inapplicability. The questions involved here are:

1. Where California has no settled construction of the nature of a cause of action created by its inheritance tax statutes, and other taxing statutes, does the construction that the cause of action is intransitory in nature by Missouri Courts present a Federal question?

2. Assuming that the Missouri Courts were incorrect in determining the nature of the cause of action created by the California inheritance tax laws and other taxing statutes, would such erroneous construction be a denial of full faith and credit to such California statutes by the Missouri Courts?

3. Can California Statutes confer or impose upon Missouri Courts a jurisdiction, a precise and detailed procedure, and a circumscribed method of assessing inheritance

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taxes, made indigenous to California by their very terminology, and entirely alien to the Missouri Code of Civil Procedure?

4. Since the Missouri Courts found that there was no competent evidence before the Missouri Courts from which they could have determined the amount of inheritance taxes allegedly due California, and the decision of the St. Louis Court of Appeals rests on this ground, among others, will this Court attempt to examine other grounds which might possibly involve Federal questions?

5. Where the petitioner in its Application for Transfer to the Supreme Court of Missouri did not raise any constitutional questions, especially the question of denial of full faith and credit to California statutes, and where, in its original and amended pleadings in the Trial Court, petitioner also failed to assert any specific federal rights or questions, will petitioner now be heard to assert such rights or raise such questions?

SUMMARY OF ARGUMENT.

California had created a complicated and precise system for the determination of inheritance taxes, involving special methods for giving notice, posting notices, appointment of an appraiser, report of the appraiser, etc., and providing that all such activity was to take place under the supervision and control of a specified California Court. Without amending these statutes in any wise, California passed a general statute purporting to give authority to the attorney general to sue in other states "to collect taxes legally due this state."

Without any settled construction by California Courts as to the nature of the cause of action so created, in the instant action the Missouri Courts determined that California had not created a transitory cause of action as to

inheritance taxes. This decision was made after a careful examination of the California statutes and the applicable California decisions. The St. Louis Court of Appeals found that the right created by the California inheritance tax laws "is inextricably bound up with a prescribed statutory remedy and that available only in California" (R. 144), consequently the cause of action was intransitory. This independent determination presents no federal question.

Respondent does not deny that California **could** have created a transitory cause of action whch would have been cognizable in the Courts of Missouri, but it does deny that California, at the time this case arose, had done so. But even that question, i. e., did California **attempt** to create a transitory cause of action, had not been determined by California Courts at the time this case arose, and has not been decided by such courts to this date.

In other words, the Missouri Courts have said in this case that California created a cause of action and limited the remedy to specially created machinery; that in so doing California did not have the power to invest the courts of Missouri with the same machinery, so necessary to the prescribed remedy, where the statutes of Missouri have not invested the Missouri courts with exactly the same machinery. Certain actions can be enforced only in certain courts, and are not subjects of general jurisdictional recognition.

The opinion of the St. Louis Court of Appeals fully considered and construed the California statutes here involved. By doing so it gave full faith and credit to them. Even if its conclusions were erroneous, such error would not constitute a denial of full faith and credit, and does not present a federal question.

But most decisively, the Missouri courts came to the decision in this case, among other things, on the premise

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that petitioner had failed to present sufficient competent evidence to support any cause of action. Under such circumstances, this Court will not seek out a federal question, even if there be one, for the purpose of obtaining jurisdiction to re-examine the action of the Missouri Courts. Since there is an adequate non-federal ground for the decision of the Missouri Courts, this Court will not inquire beyond the adequacy of that ground in order to examine a possible federal question.

Finally, the petitioner failed to raise any constitutional questions in its application for transfer to the Supreme Court of Missouri, nor did it assert any specific federal rights or questions in its original and amended pleadings in the trial court. The Missouri Supreme Court would not hear any question not so raised, and this court will not pass on any questions not properly preserved.

ARGUMENT.

I.

California Had Never Construed Its Own Inheritance Tax Statutes as Creating a Transitory Cause of Action; Therefore, the Construction That the Cause of Action Is Intransitory in Nature by Missouri Courts Presents No Federal Question.

In its opinion, the St. Louis Court of Appeals correctly decided that the cause of action created by California inheritance tax statutes (Chapter 658, California Enacted Statutes, 1943), and other statutes [especially Section 3671 (e), Calif. Enacted Statutes, 1937], was intransitory, and cognizable only in a particular California Court. What that Missouri Court did was to examine at length the applicable California statutes and endeavor to find decisions of California Courts interpreting those statutes. Having found no California decisions which in any way shed any light on the nature of the California cause of action, that Court proceeded to place its own construction on the California statutes, and to reach its own conclusions as to the nature of the California cause of action. The St. Louis Court of Appeals found in this regard (R. 145):

> "We find on reading the California statutes, that a remedy is prescribed, and that it must be pursued in a specifically designated California Court; not in any Court of any state, nor even in any Superior Court in California, but in a single Superior Court, namely, in 'the Superior Court which has acquired jurisdiction in probate of the estate of any decedent,' Section 14651, Rev. and Tax Code, or if there be no estate, the Superior Court in the county in which the decedent resided at the time of his death, Section 14652. By Section 14501, that specified Court appoints

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an inheritance tax appraiser, who has 'all the powers of a referee of the Superior Court.' Section 14502. He files his report in the Court, and the Clerk of the Superior Court gives notice 'by causing a notice to be posted at the Courthouse in the county where the Court holds its sessions,' etc. Section 14508. Ultimately, the Court enters its judgment or order fixing liability for the tax. It is needless to recite other provisions, showing that the statute prescribes a remedy in a specified California Court. . . ."

The St. Louis Court of Appeals was free to make its own determination as to just what was created by the California statutes, and its decision in this regard will not be disturbed by this Court. **Louisville & Nashville Railroad Company v. Melton**, 218 U. S. 36, 54 L. ed. 921, 30 S. Ct. 676; **Western Life Indemnity Co. v. Rupp**, 235 U. S. 261, 59 L. ed. 220, 35 S. Ct. 37; **Pennsylvania Fire Ins. Co. v. Gold Issue Mining & Milling Co.**, 243 U. S. 93, 61 L. ed. 610, 37 S. Ct. 344; **Glenn v. Garth**, 147 U. S. 360, 37 L. ed. 203, 13 S. Ct. 350; **Lloyd v. Matthews**, 155 U. S. 222, 39 L. ed. 128, 15 Sup. Ct. 70; **Finney v. Guy**, 189 U. S. 335, 47 L. ed. 839, 23 S. Ct. 558; **Allen v. Allegheny Co.**, 196 U. S. 458, 49 L. ed. 551, 25 S. Ct. 311; **Banholzer v. New York Life Ins. Co.**, 178 U. S. 402, 44 L. ed. 1124, 20 S. Ct. 972.

Petitioner argues, under Point I of its argument, that California law provides a transitory cause of action for the enforcement and collection of California inheritance taxes, and argues under Point II that it is the duty of this Court to examine the nature of the California remedy; and correct the St. Louis Court of Appeals if that court erred. Nowhere in its brief does petitioner cite any judicial authority of California courts, or of any other courts, determinative of whether or not the California cause of action was transitory or intransitory.

Nor does petitioner cite any authority for its proposal that this Court be burdened with determining whether or not the Missouri courts erred in construing California statutes. We are left with the assertion that the Missouri courts erred, and that is all. Mr. Chief Justice Fuller, speaking for the court in **Glenn v. Garth**, 147 U. S. 360, 369, 37 L. ed. 203, 206, 13 S. Ct. 350, disposed of a similar case:

> "This record may be searched in vain for any proof that, as matter of fact, the public acts of Virginia had, by law or usage in Virginia, any other effect than was given them in New York; nor can the contention of counsel, that the Virginia statutes should be construed according to their views, be treated as the equivalent of the express assertion of a right arising under the constitution or laws of the United States."

II.

There Is No Denial by Missouri Courts of Full Faith and Credit to the California Statutes Governing Inheritance Taxes, Even if the Construction of Those Statutes and the Conclusions Reached Were Incorrect.

The decision of the St. Louis Court of Appeals for the State of Missouri in construing and applying the California statutes governing inheritance taxes, even if erroneous, is not a denial of full faith and credit to those statutes. That court determined, inter alia (R. 146):

> "There is nothing in the **Inheritance Tax Statute** of California which indicates that the legislature intended to create a right on which the state could sue in a foreign state, instead of being confined to a remedy in a specified superior court of California. The statute under which the Attorney-General of California asserts power to sue is a general statute, part of the Political Code of California, when this suit

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was brought, as Section 3671 (e) thereof. It grants generally power to bring suit 'to collect taxes legally due this State,' without specific reference to inheritance taxes."

and further (R. 148):

"In summation, we find that the new type of procedure here ingeniously attempted by the plaintiff cannot be accepted because of the principle established above, that when statutory right and remedy are intertwined, as here, the prescribed remedy must be followed, and being limited by the statutory prescription to a local court, the remedy cannot be pursued extraterritorially. The claim for inheritance tax as created in California is not truly transitory (regardless of whether it might conceivably have been made so) but has been localized by the requirement of California court procedure and California judgment."

Petitioner asserts at length that such conclusions are erroneous, and urges "that such error constitutes a violation of California's rights under the United States Constitution" (Petitioner's Brief, p. 31).

Petitioner's argument must be positioned on the assumption that the full faith and credit clause of the Federal Constitution requires that the Courts of Missouri interpret the California statutes here involved in such fashion that this Court would approve the construction were it sitting as a part of the state judicial structure of Missouri. This would mean that this Court would assert a corrective hand in every instance in which a state court interpreted the statute of another state in a fashion deemed to the detriment of the party invoking the full faith and credit clause.

". . . If every time the courts of a state put a construction upon the statutes of another state, this

court may be required to determine whether that construction was or was not correct, upon the ground that if it were concluded that the construction was incorrect, it would follow that the state courts had refused to give full faith and credit to the statutes involved, our jurisdiction would be enlarged in a manner never heretofore believed to have been contemplated." **Glenn v. Garth**, 147 U. S. 360, 368, 37 L. Ed. 203, 206, 13 S. Ct. 350.

So also, where the affected party argued specifically, as does petitioner here, that the error of the state court had been demonstrated, and that this court should correct it, this court held:

> "It is earnestly argued that the court erred in its construction of the Illinois Statute. We do not pass upon this question, deeming it to be outside the limits of our jurisdiction; for it is settled that where, in a state court, the validity of an act of the legislature of another state is not in question, and the controversy turns merely upon its interpretation and construction, no question arises under the 'full faith and credit' clause of the Federal Constitution."
>
> **Western Life Indemnity Co. v. Rupp**, 235 U. S. 261, 275, 59 L. ed. 220, 225, 35 S. Ct. 37.

See also such cases as **Allen v. Alleghany Company**, 196 U. S. 458, 49 L. ed. 551, 25 S. Ct. 311; **Johnson v. New York Life Ins. Co.**, 187 U. S. 491, 47 L. ed. 273, 23 S. Ct. 194; **Lloyd v. Matthews**, 155 U. S. 222, 39 L. ed. 128, 15 S. Ct. Rep. 70; **Banholzer v. New York Life Ins. Co.**, 178 U. S. 402, 44 L. ed. 1124, 20 S. Ct. 972; **Finney v. Guy**, 189 U. S. 335, 47 L. ed. 839, 23 S. Ct. 558; **Grand Gulf R. & Bkg. Co. v. Marshall**, 53 U. S. 12 How. 165, 13 L. ed. 938; **Cook County v. Calumet & C. C. Canal & D. Co.**, 138 U. S. 635, 34 L. ed. 1110, 11 S. Ct. 435.

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III.

California Statutes Cannot Confer or Impose Upon Missouri Courts a Jurisdiction, a Precise and Detailed Procedure, and a Circumscribed Method of Assessing Inheritance Taxes, Entirely Alien to the Missouri Code of Civil Procedure.

California has imposed by statute inheritance taxes, and has provided a statutory means for the assessment and collection of such taxes. It has therefore created a right and provided a remedy for the enforcement of that right. This right and its concomitant remedy are certainly novel in the sense that they are wholly unknown to the common law, and are also novel in the sense that no court of general jurisdiction in the State of Missouri has the powers given by the California statutes to California courts.

Section 14501, California Enacted Statutes, 1943, provides that a specific California court shall "designate and appoint an inheritance tax appraiser to ascertain and submit a report to the court on the following:

(a) The clear market value of the property included in each transfer subject to this part from the decedent to any person sharing in the estate, whether the property transferred is in the estate or not.

(b) The amount of tax, if any, which is due and payable on each transfer.

(c) Such other facts regarding the tax as will assist the court in the determination of the tax."

Section 14502 gives such appraiser "all the powers of a referee of the Superior Court." Section 14506 provides that the appraiser file a written report with the Superior Court, setting forth the items specified in Section 14501. Section 14508 requires the clerk of the Superior Court to give

notice "by causing a notice to be posted at the courthouse in the county where the court holds its sessions, and shall mail a copy of the notice to the Controller and to each person chargeable with any tax in the report **who has appeared in the probate proceeding.**" (Emphasis ours.) Sections 14509 and 14511, respectively, provide for confirmation of the report and for hearing of objections, if such are filed. There is even a provision whereunder the Controller may make rules and regulations relating to administration of the Inheritance Tax Department.

The St. Louis Court of Appeals found that petitioner conceded that Missouri courts could not follow California statutory procedure:

> "Plaintiff also disclaims that this is a suit of the second type, saying in its brief (p. 6) 'there is obviously no Missouri statutory machinery for determining California inheritance tax,' and (p. 3) 'the courts of Missouri have no facilities for following the procedural requirements of the California inheritance tax law.' It is conceded further in plaintiff's brief that the trial court 'did not and could not repeat here all the procedures followed by the California court in complying with the California statutory receipe for an inheritance tax determination'" (R. 142, 143).

An analogous situation occurred in **Slater v. Mexican National Railroad Company**, 194 U. S. 120, 128, 48 L. ed. 900, 903, 24 S. Ct. 581. In this case the Mexican statutes created a cause of action for wrongful death which provided that the responsibility of the tort-feasor included, besides the expenses of medical attention and burial and damages to the property of the deceased, the expenses of the support not only of the widow, descendants and ascendants of the deceased who were being supported by him but also to his posthumous descendants. The court held:

"The present action is a suit at common law, and the court has no power to make a decree of this kind contemplated by the Mexican statutes. What the Circuit Court did was to disregard the principles of the Mexican statute altogether and to follow the Texas statute. This clearly was wrong and was excepted to specifically . . . Evidently the Texas courts would deem the dissimilarities between the local law and that of Mexico too great to permit an action in the Texas state courts . . ."

The Missouri courts found that the prescribed remedy provided by the California statutes prevented Missouri courts from entertaining the action. The St. Louis Court of Appeals said:

"Thus, we have a situation where a right (to levy an inheritance tax) is inextricably bound up with a prescribed statutory remedy available only in California. When a legislature so ties together a right and a remedy it is impossible for courts of any other state to exercise jurisdiction" (R. 144).

The situation in the Slater case is certainly comparable to the situation in the instant case and the conclusion of Mr. Justice Holmes is apropos. The type of cause of action presently before the court can best be described by the language of this Court in **Pollard v. Bailey,** 87 U. S. 20 Wall. 520, 526, 22 L. ed. 376, 378:

". . . The liability and the remedy were created by the same statute. This being so, the remedy provided is exclusive of all others. A general liability created by statute without a remedy may be enforced by an appropriate common law action. But where the provision for the liability is coupled with a provision for a special remedy, that remedy, and that alone must be employed."

See also such cases as **Tennessee Coal, Iron & Railroad Co. v. George**, 233 U. S. 354, 58 L. ed. 997, 34 S. Ct. 587; **Galveston H. & S. A. R. Co. v. Wallace**, 223 U. S. 481, 56 L. ed. 516, 32 S. Ct. 205; **Stewart v. B. & O. R. Co.**, 168 U. S. 445, 42 L. ed. 537, 18 S. Ct. 105; **Fourth National Bank v. Francklyn**, 120 U. S. 747, 30 L. ed. 825, 7 S. Ct. 757; and a recent discussion of these and other related cases in **Davis v. P. E. Harris & Co.**, 25 Wash. 2d 664, 171 P. 2d 1016.

The argument which petitioner is making was also made by the State of Colorado in a case quite similar to the instant case. The New York Court of Appeals answered the argument by holding:

> "The Court must read the Colorado statute as it is written. It imposes a special burden upon the right of succession to secure public revenue for governmental purposes. Brown v. Elder, 32 Colo. 527, 77 Pac. 853; Macky's Estate, 46 Colo. 79, 102 Pac. 1075. Not only must the transfer tax be assessed in accordance with the statute, but the method of collection provided by law must be followed. A fair and reasonable construction of the statute in consonancy with the legislative intention does not permit its enlargement to reach those who assert their freedom from liability under the due process clause of the United States Constitution. The only intent of the legislature that the court can discern is that the tax should be collected in accordance with the statute, not otherwise. Matter of Gould, 156 N. Y. 423, 425, 51 N. E. 287. **Irregular assessments and unauthorized methods of collection may not be justified by pointing out difficulties in the practical application of the statute as written and appealing to the moral sense to meet the objection that no legal liability has been established against the beneficiaries. No substitute for the statutory method of collecting taxes, as such method is**

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expressed or fairly implied, may be invoked either in the State of Colorado or elsewhere." (Emphasis ours.) **State of Colorado v. Harbeck,** 232 N. Y. 71, 81, 133 N. E. 357, 358.

This is not a situation wherein the courts of Missouri are arbitrarily refusing to recognize and enforce a cause of action arising under the laws of one state while recognizing and enforcing a comparable cause of action arising under the laws of another. Nor is this a situation where the courts of Missouri are arbitrarily refusing to recognize and enforce a cause of action arising under the laws of another state while recognizing a comparable cause of action arising under its own laws. Nor is this a situation where Missouri is refusing access to its courts on the grounds of public policy, nor a situation wherein a state has created a transitory cause of action and attempted to restrict its enforcement to its own courts. But, it will be argued, this is a situation wherein both California and Missouri have created comparable causes of action, for both have somewhat comparable inheritance tax statutes. While this is true, it serves to illustrate the point at hand, for Missouri also requires that inheritance taxes be determined in a particular way, by particular procedures, under the supervision of a special Missouri court of limited jurisdiction. Chapter 145, R. S. Mo., 1949.

California has provided nothing in its inheritance tax statutes that would permit a Missouri court of general jurisdiction to hear and determine the same.

IV.

Inasmuch as the Decision of the St. Louis Court of Appeals Rests on the Ground, Among Others, That There Was No Competent Evidence Before the Missouri Courts From Which They Could Have Determined the Amount of Inheritance Taxes Allegedly Due California, This Court Will Not Attempt to Examine Other Grounds Which Might Possibly Involve Federal Questions.

At the trial of this cause petitioner made no effort to have the Missouri Court determine any of the facts necessary for the determination of the California inheritance tax, and the only question of fact actually litigated was that of domicile of the decedent, Mary Agnes Rogers. To support its allegations as to the assets of the estate, the beneficiaries thereof and their relationship to decedent, the interest and the value thereof received by each beneficiary, the expenditures made on behalf of the state by the California Administrator, and such other facts as were necessary for the determination of the California interitance tax, petitioner, in the words of the St. Louis Court of Appeals:

> ". . . offered in evidence as its chief reliance in this case the June 24, 1947, judgment of its Superior Court (by a 'Court Commissioner' whose status and authority are not established in this record, but that issue is not before us) approving and confirming the report of its inheritance tax appraiser, finding that the market value of the property subject to inheritance tax is $98,152.27 and assessing and fixing the liabilities of named heirs (Exh. A); and the account and report of its public administrator and petition for discharge, nothing for distribution, with order of August 9, 1948, approving said account and granting said petition (Exh. B). Parenthetically, it might be noted

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that although a copy of the Report of the Inheritance Tax Appraiser was attached to the petition as an exhibit, no authenticated copy of same was ever offered in evidence. However, some questions were asked concerning said report, whereby some of the contents thereof came into evidence.

"Without said Exhibit A and Exhibit B plaintiff would have been without evidence of the value of decedent's estate, especially her California assets and of the computation and assessment of inheritance tax . . ." (R. 143, 144).

It must be remembered that the court, in speaking as it did above, was answering the following question which it had put to itself:

"Thus, in effect, plaintiff contends that it here pursued, and was entitled to pursue a third procedure, viz., that it sued in Missouri to have defendant's liability for inheritance tax determined without relying on any prior California adjudication as a judgment, but using prior California court orders as evidence or proof of its case. May this be done?" (R. 143.)

Thus, the Court found that the respondent had failed to offer competent evidence in support of its cause of action. That it also concluded that the Courts of Missouri lacked the power to entertain the cause of action is immaterial, since the first ground is an adequate non-federal ground sufficient to support the decision.

In **Klinger v. Missouri,** 80 U. S. 257, 263, 20 L. ed. 635, 637, the court said:

"The rules which govern the action of this court in cases of this sort are well settled. Where it appears by the record that the judgment of the state court might have been based either upon a law which would

raise a question of repugnancy to the Constitution, laws or treaties of the United States, or upon some other independent ground, and it appears that the court did, in fact, base its judgment on such independent ground, and not on the law raising the Federal question, this court will not take jurisdiction of the case, even though it might think the position of the state court an unsound one. But where it does not appear on which of the two grounds the judgment was based, then, if the independent ground on which it might have been based was a good and valid one, sufficient of itself to sustain the judgment, this court will not assume jurisdiction of the case; but if such independent ground was not a good and valid one, it will be presumed that the state court based its judgment on the law raising the Federal question, and this court will then take jurisdiction. . . ."

See also such cases as **Smith v. Adsit**, 83 U. S. 16 Wall., 185, 21 L. ed. 310; **Eustis v. Bolles**, 150 U. S. 361, 37 L. ed. 1111, 14 S. Ct. 131; **Dibble v. Bellingham Bay Land Co.**, 163 U. S. 63, 41 L. ed. 72, 16 S. Ct. 939; **Moore v. Mississippi**, 88 U. S. 21 Wall., 636, 22 L. ed. 653; **Cuyahoga River Power Company v. Northern Realty Company**, 244 U. S. 300, 61 L. ed. 1153, 37 S. Ct. 643; **Allen v. Arguimbau**, 198 U. S. 149, 49 L. ed. 990, 25 S. Ct. 622; **Fox Film Corp. v. Muller**, 296 U. S. 207, 80 L. ed. 158, 56 S. Ct. 183; **Hale v. Akers**, 132 U. S. 554, 33 L. ed. 442, 10 S. Ct. 171, and **DeSaussure v. Gaillard**, 127 U. S. 216, 32 L. ed. 125, 8 S. Ct. 1053. Note especially such cases as **Lynch v. New York**, 293 U. S. 52, 79 L. ed. 191, 55 S. Ct. 16; **Buck v. California**, 343 U. S. 99, 96 L. ed. 775, 72 S. Ct. 502, and **Stembridge v. State of Georgia**, 343 U. S. 541, 96 L. ed. 1130, 72 S. Ct. 834.

The complete failure of admissible and competent evidence is demonstrated by the language of the Karp case,

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in which a comparable situation was considered by the Ohio Courts:

> "It seems to us that the amended petition in the case at bar discloses even more clearly that Minnesota had nothing within its borders upon which to exercise its power. The defendant at no time was a resident of the state. It is not alleged that he was ever in the state. No property was sequestered. The only suggested basis for the exercise of its sovereignty is that in 1940 he had received income from business transacted in Minnesota. Where or in what manner he received it is not shown. In this situation in 1944, the Commissioner of Taxation, an administrative officer, without personal service, assessed this tax which under the law was made prima facie evidence against the defendant. That, it seems to us, was an attempt by Minnesota to extend its sovereignty beyond its boundaries and control and bind the defendant. No such power resides in any state and an attempt to so extend its power is void and violates the XIVth Amendment to the Constitution of the United States. To give effect to such an attempt would deprive the defendant of property without due process of law.
>
> "We are of the opinion that the amended petition fails to show a cause of action enforceable in Ohio." **State of Minnesota v. Karp**, 84 Ohio App. 51, 60, 84 N. E. 2d 76, 80.

There being an adequate non-federal ground sufficient upon which to rest the decision of the St. Louis Court of Appeals, this Court will not assert jurisdiction merely to inquire whether there might also be involved a federal constitutional question.

V.

Petitioner Having Failed to Raise Any Constitutional Questions in Its Application for Transfer to the Supreme Court of Missouri, and Having Failed to Assert Any Specific Federal Rights or Questions in Its Original or Amended Pleadings in the Trial Court, Cannot Now Assert Such Rights or Raise Such Questions.

The petitioner did not assert the federal question, which it now raises, in its pleadings before the trial court; as a matter of fact, its pleadings seemed to be based upon the theory of giving full faith and credit to a final judgment of a California court, not seeking full faith and credit for statutes in California.

But, moreover, even if petitioner had raised a federal question, there, or later, it must preserve that question all the way up the line. An examination of petitioner's Application for Transfer to the Supreme Court of Missouri (R. 154-156) discloses that petitioner failed in any wise to call to the attention of the court any "claim of denial of full faith and credit to the statutes of California." In this final and necessary step before the state court the petitioner failed to raise or preserve the question which it now asserts before this court. Petitioner failed, as required by Missouri procedure, to call specific attention to the federal question which it now seeks to assert. Under the decided cases of Missouri, failure to specify the federal question precludes its consideration by the highest State Court. **City of St. Louis v. Butler Co.**, 358 Mo. 1221, 219 S. W. 2d 372. Under these circumstances, this Court will not consider any such question. **Bailey v. Anderson**, 326 U. S. 203, 90 L. ed. 3, 66 S. Ct. 66; **Herndon v. Georgia**, 295 U. S. 441, 79 L. ed. 1530, 55 S. Ct. 794; **John v. Paullin**, 231 U. S. 583, 58 L. ed. 381, 34 S. Ct. 178; **Parke v. Illinois**, 333 U. S. 571, 92 L. ed. 886, 68 S. Ct. 708.

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Discussion of Petitioner's Cases.

We shall now deviate briefly in order to examine some of the cases cited by petitioner in its brief, together with a few of the arguments made in connection therewith. **Tennessee Iron & Coal Company v. George**, 233 U. S. 354, 58 L. ed. 997, 34 S. Ct. 587, is cited by the petitioner on pages 24 and 25 of its petition and brief as is **Atchison, Topeka & Santa Fe Railroad v. Sowers**, 213 U. S. 55, 53 L. ed. 695, 29 S. Ct. 397, for the proposition that a transitory cause of action created by the laws of one state cannot be made intransitory by a clause attempting to limit its enforcement to the courts of the state of its creation. We have no quarrel with this proposition but think it inapplicable to the instant situation wherein a state failed to create a transitory cause of action originally. Such cases as these are adequately answered in Point III of this brief.

Nor have we any quarrel with the general proposition that all California statutes are entitled to full faith and credit as required by such cases as **Bradford Electric Company v. Clapper**, 286 U. S. 145, 76 L. ed. 1026, 52 S. Ct. 571 (Petitioner's Brief, p. 32). But as we have pointed out in Point I above, the mere construction of the California statutes is not a denial of full faith and credit to such statutes.

This case is not comparable to the facts of **First National Bank of Chicago v. United Air Lines**, 342 U. S. 396, 96 L. ed. 441, 72 S. Ct. 421 (Petitioner's Brief, p. 32), in which case action was brought in a Federal Court in Illinois on a wrongful death action arising under the Utah Wrongful Death Statute. Illinois had a statute which provided that such cases should not be maintained in Illinois if service could be obtained upon defendant at the place where death occurred. This Court held that the full faith and credit clause was violated since quite obviously Illinois recognized other wrongful death cases. In

the instant case the State of Missouri has not permitted any original action for the recovery of inheritance taxes in the courts of Missouri, nor any action comparable to a cause of action for inheritance taxes and there is, therefore, no question of Missouri recognizing a cause of action for inheritance taxes of one state while denying recognition to the cause of action created by California statutes.

Petitioner would have this Court believe that the case of **State ex rel. Oklahoma Tax Commissioner v. Rodgers et al.**, 238 Mo. App. 1115, 193 S. W. 2d 919, creates a comparable conflict. The Rodgers case came before the St. Louis Court of Appeals on an appeal from the order of the trial court sustaining a demurrer to the petition. That case laid down the rule that foreign tax laws are not penal laws and that it was not the public policy of Missouri to deny to other states access to Missouri courts for the purpose of enforcing revenue laws of such other states—and that is all the case held. In the Rodgers case, in view of the demurrer, it was admitted that Mr. and Mrs. Rodgers had been residents of Oklahoma during the tax years in question; that they filed tax returns while residents of Oklahoma; that under the laws of that state and by virtue of those tax returns so filed, they became indebted to the state in the amounts designated by the tax commission relying on the returns so filed; that Mr. and Mrs. Rodgers had moved out of the state without paying the taxes for which they were so indebted, and that the state was pursuing them in Missouri for the purpose of collecting this indebtedness. There was no question in the Rodgers case concerning the power and jurisdiction of Missouri courts to entertain the Oklahoma cause of action, nor was there any question as to the sufficiency of evidence in proof thereof before the court.

A case such as **Order of United Commercial Travelers of America v. Wolfe**, 331 U. S. 586, 91 L. ed. 1687, 67 S. Ct. 1355 (Petitioner's Brief, p. 33), has no applicability to the

instant case, inasmuch as the question before the Court therein was whether or not the full faith and credit clause required the Court of the Forum to give effect to a provision of the Constitution of the Society prohibiting the bringing of an action on a claim more than six months after the disallowance of the claim by the Supreme Executive Committee of the Society when that provision was valid under the law of the state in which the Society was incorporated, but when the time prescribed generally for commencing actions on contracts by the law of the Forum was six years and, further, the law of the Forum provided in effect that any provision in a contract limiting such statute of limitations was void. There plainly the law was clear and it was a question of choice of law, that is, whether the court of the Forum could apply its own statute of limitations or whether it was required to apply the clear law of the state creating the contract.

John Hancock Mutual Life Insurance Co. v. Yates, 299 U. S. 178, 182, 81 L. ed. 106, 108, 57 S. Ct. 129 (Petitioner's Brief, p. 33), is a case comparable to the Wolfe case. The question before the court was whether the courts of Georgia were required under the full faith and credit clause to give effect to New York statutes limiting provisions and representations involved in insurance contracts. The court said that it was required to; and the only language which can affect the instant case said:

> "The reasoning of the Georgia court, and the conclusion reached by it, are not sound. **No question of remedy is presented** . . . To sustain the defense involves merely recognition by the courts of Georgia that the parties have by their **contract** made in New York subjected themselves to certain conditions prescribed by its statute. Such recognition does not give to the New York statute extra-territorial effect." (Emphasis ours.)

So too, **Alaska Packers Association v. Industrial Accident Commission of the State of California,** 294 U. S. 532, 79 L. ed. 1044, 55 S. Ct. 518 (Petitioner's Brief, p. 33), is inapplicable. The petitioner cites that case as authority for the proposition that when the laws of two states conflict, this court will decide to what extent the law of the foreign state must be given full faith and credit. Actually, the case stands for the proposition, first, that full faith and credit was not denied to an Alaska Workmen's Compensation Act in refusing to allow it as a defense to a proceeding under the California Workmen's Compensation Act for injuries sustained in Alaska by one not a resident of California who entered into a contract in California to work in Alaska for a season of between two and three months at the conclusion of which he was to be returned to California and there receive his wages; and further that where the policy of a statute of the Forum comes into conflict with that of another state the conflict is to be resolved not by giving automatic effect to the full faith and credit clause, requiring the court of the Forum to subordinate its statutes to those of the other, but by appraising the governmental interests of each jurisdiction and turning the scale of decision according to their weight. Nor do we find any applicability in either **Pacific Insurance Company v. Industrial Accident Commission,** 306 U. S. 493, 83 L. ed. 940, 59 S. Ct. 629, or **Magnolia Petroleum Co. v. Hunt,** 320 U. S. 430, 88 L. ed. 149, 64 S. Ct. 208 (Petitioner's Brief, p. 33). In the **Pacific Insurance Company** case the question was whether or not the court of the Forum was required to apply and give full faith and credit to the Workmen's Compensation statutes of the place of the contract or whether it could apply the Workmen's Compensation Statute of the place of the Forum, which was also the place of the injury. The court held that it was free to apply the Workmen's Compensation Act of the Forum. In the Magnolia Petroleum Co. case the question was whether the full

faith and credit clause required Louisiana to recognize an award made under the Texas Workmen's Compensation Act so as to bar further action for the same injury under the Louisiana Workmen's Compensation law. The court held that the Texas award had the force and effect of a judgment and was res judicata and required recognition by the Louisiana court. It has no applicability to the instant case.

Petitioner cites three cases for the proposition that if the decision of the Missouri courts in erroneous, then such courts have refused to give petitioner the equal protection of its laws and denied to petitioner privileges extended to Oklahoma contrary to the provisions of the Fourteenth Amendment. These cases are **Kentucky Finance Corporation v. Paramount Auto Exchange Corp.**, 262 U. S. 544, 67 L. ed. 1112, 43 S. Ct. 636; **Lawrence v. State Tax Commission**, 286 U. S. 276, 76 L. ed. 1102, 52 S. Ct. 556, and **McKnett v. St. Louis and San Francisco Railway Co.**, 292 U. S. 230, 78 L. ed. 1227, 54 S. Ct. 690 (Petitioner's Brief, p. 34). None of these cases stands for this proposition. The Kentucky Finance case holds that foreign corporations must be accorded the same procedural protection as citizens of the Forum, but there was nothing in any wise comparable to the situation in the instant case. The Lawrence case held that a state may tax a citizen of the state on income derived wholly from activities carried on outside the state. The McKnett case held that a state court could not deny jurisdiction solely because of the source of the law sought to be enforced—in that case, the Federal Employers' Liability Act. The only significant language which we found in the case is as follows:

> "Alabama has granted to its circuit courts general jurisdiction of the class of actions to which that here brought belongs, in cases between litigants situated like those in the case at bar. The court would have had jurisdiction of the cause between these parties if

> the accident had occurred in Alabama. It would have had jurisdiction although the accident occurred in Tennessee, if the defendant had been a domestic corporation. It would have had jurisdiction, although the defendant was a foreign corporation, the plaintiff a nonresident, and the accident occurred in Tennessee, if the suit had been brought for an injury suffered while engaged in intrastate commerce. Thus, the ordinary jurisdiction of the Alabama circuit court is appropriate to enforce the right against this defendant conferred upon the plaintiff by the Federal Employers' Liability Act. And its jurisdiction was invoked according to the rules of procedure prevailing in that court." 292 U. S. 230, 232, 78 L. ed. 1227, 1229.

In other words, the court there found that the Alabama court was a court having general jurisdiction over this class of actions, which is certainly not the case here. Even petitioner would not claim that Missouri circuit courts have the powers granted to California Superior Courts by the California Inheritance Tax Statutes.

CONCLUSION.

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari should be denied.

Respectfully submitted,

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COPY

FILE
DEC 20
HAROLD B. WILL

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1954.

No. 32.

STATE OF CALIFORNIA on Relation of Edmund G. Brown, Attorney General, and Robert C. Kirkwood, State Controller,
Plaintiff and Petitioner,

vs.

ST. LOUIS UNION TRUST COMPANY, a Corporation Organized Under the Laws of the State of Missouri,
Defendant and Respondent.

On Writ of Certiorari to the St. Louis Court of Appeals of the State of Missouri.

BRIEF FOR THE RESPONDENT.

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Statutes Cited.

California Political Code:
Section 3671e 7, 11
California Revenue and Taxation Code:
Section 14501 ..... 4, 25, 26
Section 14502 ..... 5, 26
Section 14506 ..... 5, 26
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Section 14509 ..... 6, 26
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Section 14513 7
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Section 14652 7
Chapter 145, R. S. Mo. 1949 29
United States Code:
Title 28, Section 1257 (3) 2
Title 28, Sections 2101-4 2
United States Constitution:
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Fourteenth Amendment, Section 1 4

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1954.

No. 32.

STATE OF CALIFORNIA on Relation of Edmund G. Brown, Attorney General, and Robert C. Kirkwood, State Controller,
Plaintiff and Petitioner,

vs.

ST. LOUIS UNION TRUST COMPANY, a Corporation Organized Under the Laws of the State of Missouri,
Defendant and Respondent.

On Writ of Certiorari to the St. Louis Court of Appeals of the State of Missouri.

BRIEF FOR THE RESPONDENT.

OPINIONS BELOW.

The opinion of the St. Louis Court of Appeals of the State of Missouri appears in the printed record (R. 131-149) and is reported in 260 S. W. (2d) 821. It has not, as yet, been reported in the official reports of the Courts

of Appeals of the State of Missouri. The denial by the Supreme Court of Missouri of the application of petitioner for transfer from the St. Louis Court of Appeals to the Supreme Court of Missouri appears in the printed record (R. 157) and is not yet officially reported.

The prior opinion of the Supreme Court of Missouri, transferring the cause from that court to the St. Louis Court of Appeals, appears in the printed record (R. 120-126) as does its order of transfer (R. 126) and is reported in 248 S. W. (2d) 592. Respondent's motion for rehearing or in the alternative to transfer to the court en banc appears in the printed record (R. 127-129). The opinion of the Supreme Court of Missouri overruling that motion appears in the printed record (R. 129-130) and is reported in 248 S. W. (2d) 596.

JURISDICTION.

Petitioner asserts that jurisdiction of this court arises out of Title 28, Sections 2101-4, United States Code, rules 38 and 38½, rules of the Supreme Court of the United States. We find no jurisdictional relevancy in the cited provisions. Under them this court would have no jurisdiction.

The only provision of the U. S. Code under which this court could possibly have jurisdiction is 28 U. S. C. 1257 (3).

QUESTIONS INVOLVED.

I.

The Missouri courts found that the cause of action created by the California statutes is intransitory. Does such a finding present a federal question?

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II.

Since the decision of the St. Louis Court of Appeals rests on the independent ground that there was no competent evidence before the Missouri courts from which could be determined the amount of inheritance taxes allegedly due California, will this Court examine other grounds for the decision which might possibly involve federal questions?

III.

Can the Petitioner, after having failed to raise any federal questions in its Application for Transfer from the St. Louis Court of Appeals to the Supreme Court of Missouri, now raise federal questions before this Court?

IV.

Since the original California judgment was not res judicata or binding against Respondent, would its admission in evidence and its use as a basis for a judgment against Respondent in a Missouri Court be a deprivation of property without due process of law contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States?

V.

Can California statutes confer or impose upon Missouri courts a jurisdiction, a precise and detailed procedure, and a circumscribed method of assessing inheritance taxes, indigenous to California courts, and entirely alien to the Missouri Code of Civil Procedure?

STATUTES INVOLVED.

United States Constitution, Article IV, Section 1:

> "Section 1. Full Faith and Credit shall be given in each State to the Public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof."

United States Constitution, Fourteenth Amendment, Section 1:

> "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

California Revenue and Taxation Code:

> "§ 14501. **Appointment of appraiser.** At or prior to the time of the appointment of the probate appraiser or appraisers pursuant to Section 605 of the Probate Code, the superior court having jurisdiction in probate of the estate of any decedent, or a judge of that court, shall designate and appoint an inheritance tax appraiser to ascertain and submit a report to the court on the following:
>
> "(a) The clear market value of the property included in each transfer subject to this part from the decedent to any person sharing in the estate, whether the property transferred is in the estate or not.

"(b) The amount of tax, if any, which is due and payable on each transfer.

"(c) Such other facts regarding the tax as will assist the court in the determination of the tax.

"§ 14502. **Powers of appraiser.** Upon his designation and appointment the inheritance tax appraiser has:

"(a) Jurisdiction to require the attendance before him of the executor, administrator, any person interested in the estate, or any other person who he may have reason to believe possesses knowledge of the estate, of any property transferred by the decedent by a transfer subject to this part, or of any facts that will aid the appraiser or the court in the determination of the tax.

"(b) All the powers of a referee of the superior court.

"§ 14506. **Report.** Upon the completion of his appraisement the appraiser shall file a written report with the superior court setting forth the following:

"(a) The clear market value of the property included in each transfer subject to this part from the decedent to any person sharing in the estate, whether the property transferred is in the estate or not.

"(b) The amount of tax which is due and payable on each transfer.

"(c) Such other facts as may advise the court in regard to the tax, or which the court may require.

"In addition to filing the report, the appraiser may file with the court any deposition, exhibit, other evidence, or other information taken before or submitted to him.

"§ 14507. **Copy to Controller.** Upon filing the report the appraiser shall mail a copy to the Controller.

"§ 14508. **Notice of filing.** On the day that the report is filed, or on the next succeeding judicial day, the clerk of the superior court shall give notice of the filing to all persons interested by causing a notice to be posted at the courthouse in the county where the court holds its sessions, and shall mail a copy of the notice to the Controller and to each person chargeable with any tax in the report who has appeared in the probate proceeding.

"§ 14509. **Order fixing tax where no objections.** If no objection to the report is filed prior to the expiration of 10 days from and after the posting and mailing of the notice, the superior court, a judge of the court, or, if the court is located in a county or city and county having a population of 900,000 or more, a court commissioner appointed by the court may, without further notice, make an order confirming the report and fixing the tax in accordance therewith.

"§ 14510. **Objections.** At any time prior to the making of the order, any person interested, including the Controller, may file a written objection to the report.

"§ 14511. **Notice of hearing.** If an objection is filed, the clerk of the superior court shall fix a time, not less than 10 days after the filing, for a hearing on the objection, and shall give notice of the hearing by posting a notice of hearing at the courthouse in the county where the court holds its sessions, and by forthwith mailing a copy to the objection and of the notice to the Controller, executor, administrator, and the inheritance tax appraiser.

"§ 14512. **Report presumed correct.** For the purpose of the hearing the report of the inheritance tax appraiser is presumed to be correct, and at the hearing it is the duty of the objector to proceed in support of his objection.

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"§ 14513. **Order.** Upon the completion of the hearing the court may make such order as to it may seem appropriate.

"§ 14651. **Probate court.** The superior court which has acquired jurisdiction in probate of the estate of any decedent shall hear and determine in the probate proceedings all questions relative to any tax imposed by this part on each transfer subject to this part from the decedent to any person sharing in the estate, whether the property transferred is in the estate or not.

"§ 14652. **Where resident decedent leaves no estate, etc.** The superior court of the county in which a decedent who was a resident of this State resided at the time of his death has jurisdiction to hear and determine all questions relative to any tax imposed by this part on any transfer made by the decedent where the decedent either (a) leaves no estate or (b) leaves an estate in which the property transferred is not included and the transferee does not share."

California Political Code:

"§ 3671e. The courts of this State shall recognize and enforce liabilities for taxes lawfully imposed by other States which extend a like comity to this State.

"The Attorney General is hereby empowered to bring suits in the courts of other States to collect taxes legally due this State. The officials of other States which extend a like comity to this State are empowered to sue for the collection of such taxes in the courts of this State. A certificate by the Secretary of State under the great seal of the State that such officers have authority to collect the tax shall be conclusive evidence of such authority."

STATEMENT.

The State of California at the relation of Fred N. Houser, its then attorney general, filed suit in the Circuit Court of the County of St. Louis, State of Missouri, seeking recovery of inheritance taxes allegedly assessed on behalf of the State of California during the course of administration in that state of the estate of Mary Agnes Rogers, and allegedly remaining due and unpaid. The defendants named in the Missouri action were the St. Louis Union Trust Company, a Missouri corporation, as trustee under a certain indenture of trust created by the decedent, Mary Agnes Rogers, other defendant residents of Missouri named as beneficiaries in said indenture of trust and a corporate beneficiary, Bellefontaine Cemetery Association, a Missouri corporation (R. 1-24).

Decedent, Mary Agnes Rogers, was originally a resident of Missouri (R. 133, 134). During her lifetime, on July 8, 1936, she created a revocable trust, under the terms of which she transferred to St. Louis Union Trust Company, as trustee, certain intangible personalty. The terms of the trust reserved the income to herself for life and provided for distribution to certain named beneficiaries at her death (R. 81-87). During her later years she lived in California and died there on June 14, 1945 (R. 133, 134).

After her death her will was filed for probate in the Superior Court of Los Angeles County, California, and her estate was administered by the public administrator of that county (R. 134, 137). Petitioner alleged that during the course of that administration certain inheritance taxes were assessed in California, which taxes were determined by including the value of the assets of the Missouri trust estate, as well as the value of other property physically located in California and subject to the jurisdiction of its

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courts (R. 132). Petitioner also alleged that during the course of administration the public administrator used the assets physically within California to pay expenses of administration, a Federal estate tax, and a portion of the California inheritance taxes, leaving unpaid California inheritance taxes in the amount of $4,349.75 (R. 132).

During the course of probate administration in California none of the defendants named in the original pleadings was within California or in any way personally subject to the jurisdiction of its courts (R. 137). Respondent, St. Louis Union Trust Company, during such period, was and still is, a Missouri corporation not qualified to do or doing business in California, and none of the assets comprising the trust estate was physically located within California (R. 136).

At the trial the only evidence sought to be introduced by petitioner was evidence allegedly as to the domicile of decedent, Mary Agnes Rogers, evidence allegedly supporting the fact that a proceeding was had in California for determination of California inheritance taxes, evidence as to the amount of such taxes, and evidence allegedly supporting the balance of California inheritance taxes remaining unpaid. After the trial the trial court dismissed as to all of the defendants except respondent, and found in favor of the petitioner and against respondent for the relief prayed in the petition (R. 108).

Respondent appealed to the Supreme Court of Missouri, which court transferred the cause to the St. Louis Court of Appeals on the ground that Respondent had failed to properly raise a State constitutional or a Federal constitutional question (R. 120-126). Respondent then filed its motion for rehearing, or in the alternative, to transfer to the court en banc (R. 127-129). This motion was denied by the Supreme Court of Missouri (R. 129-130) and the

cause was transferred to the St. Louis Court of Appeals (R. 126).

The St. Louis Court of Appeals reversed the decision of the St. Louis County Circuit Court on two bases: First, that California had created a cause of action for the assessment and collection of inheritance taxes not cognizable in Missouri courts and, second, that Petitioner had failed to introduce sufficient competent evidence to support whatever cause of action it may have had (R. 131-149). The Petitioner then filed in the St. Louis Court of Appeals a motion for rehearing or, in the alternative, for transfer to the Supreme Court of Missouri (R. 151-152), which motion was denied October 16, 1953 (R. 152).

Thereafter Petitioner filed in the Supreme Court of Missouri an Application for Transfer of the cause from the St. Louis Court of Appeals to the Supreme Court of Missouri, which application failed in any wise to raise or call to the attention of the Supreme Court of Missouri any state constitutional or federal constitutional question, but sought review only on the grounds that a conflict allegedly existed between the instant decision by the St. Louis Court of Appeals and an older decision of the St. Louis Court of Appeals, **State ex rel. Oklahoma Tax Commission v. Rodgers et al.**, 238 Mo. App. 1115, 193 S. W. (2d) 919, 165 A. L. R. 785 (R. 154-156). The application was denied without opinion by the Supreme Court of Missouri on December 14, 1953 (R. 157). On application of the Petitioner the St. Louis Court of Appeals stayed its mandate to the trial court by an order entered January 15, 1954 (R. 159). The Writ of Certiorari was granted by the Supreme Court of the United States on or about the 14th day of October, 1954. Respondent's attorneys received by mail three copies of the Brief for Petitioner on November 24, 1954.

SUMMARY OF ARGUMENT.

During the period of time involved in the administration of the Estate of Mary Agnes Rogers in the State of California, California had in force a precise and detailed system for the determination of inheritance taxes involving special procedures for giving notice, posting notices, appointment of an appraiser, report of the appraiser, approval of the report by the Court, order of the Court, etc., and providing that all those things take place under the supervision and control of the Superior Court of California of the County where decedent resided at time of death (California Revenue and Taxation Code).

Without amending these inheritance tax statutes, California passed a general statute purporting to give authority to the Attorney General to sue in other states "to collect taxes legally due this state" (California Political Code, §3671e).

California courts, at the time of the various decisions by the Missouri courts, had made no determination as to the nature of the cause of action so created. The Missouri courts in the instant case determined that California had created an intransitory cause of action, not cognizable by Missouri courts. The St. Louis Court of Appeals states that its decision was made after a careful examination of the California statutes and the applicable California decisions. That court found that the right created by the California inheritance tax laws "is inextricably bound up with a prescribed statutory remedy available only in California" (R. 144), and that consequently the cause of action was an intransitory one. There is no federal question to be found in this independent determination by the Missouri Courts. **Glenn v. Garth**, 147 U. S. 360, 37 L. Ed. 203, 13 S. Ct. 350.

California could have created a transitory cause of action which would have been cognizable in the courts of Missouri, but the Missouri courts deny that California, at the time this case arose, had created such a cause of action (R. 145, 146, 148). See **State ex rel. Oklahoma Tax Commission v. Rodgers**, 238 Mo. App. 1115, 193 S. W. 2d 919, 165 A. L. R. 785.

In other words, the Missouri courts have said in this case that California created a cause of action and confined the remedy to specially created California machinery; that in so doing, California did not have the power to invest the courts of Missouri with the same machinery, so necessary to the prescribed remedy. The Missouri courts also decided that the statutes of Missouri have not invested Missouri courts with the power and authority necessary to the determination of California inheritance tax liability. For such reasons, the St. Louis Court of Appeals correctly decided that petitioner had no cause of action cognizable in Missouri courts. **Pollard v. Bailey**, 20 Wall. (87 U. S.) 520, 22 L. ed. 376.

The St. Louis Court of Appeals in its opinion fully considered and construed the California statutes and, by so doing, gave full faith and credit to such statutes. Therefore, even if the conclusions reached by the St. Louis Court of Appeals were erroneous, such error would not constitute a denial of full faith and credit, and would not present a federal question. **Western Life Indemnity Co. v. Rupp**, 235 U. S. 261, 59 L. ed. 220, 35 S. Ct. 37.

Further, the Missouri courts reached the decision in this case after finding that the Petitioner had failed to present sufficient competent evidence to support any cause of action, whether transitory or not. Under such circumstances, this court will not seek out a federal question, even should there be one, for the mere purpose of obtaining jurisdiction in order to re-examine the action taken by

the Missouri courts. This is an adequate non-federal ground for the decision by the Missouri courts and this court will not inquire beyond the adequacy of that ground in order to examine a possible federal question. **Klinger v. Missouri**, 13 Wall. (80 U. S.) 257, 20 L. ed. 635. Besides, a judgment against the respondent in this case would violate the provisions of the Due Process clause of the Fourteenth Amendment to the Constitution of the United States, since it would have to be based upon a California judgment to which respondent was not a party. Peanoyer v. Neff, 95 U. S. 714, 24 L. ed. 565. **Riley v. New York Trust Co.**, 315 U. S. 343, 86 L. ed. 885, 62 S. Ct. 614.

Finally, the petitioner failed to raise any constitutional questions, state or federal, in its application for transfer to the Supreme Court of Missouri (R. 154-156). The Missouri Supreme Court would not hear any federal question petitioner failed to raise, and this court will not pass on any federal questions not properly raised and preserved before the Missouri Supreme Court. **City of St. Louis v. Butler Co.**, 358 Mo. 1221, 219 S. W. 2d 372; **Bailey v. Anderson**, 326 U. S. 203, 90 L. ed. 3, 66 S. Ct. 66.

ARGUMENT.

I.

A. The Construction by Missouri Courts That the Cause of Action Created by the California Statutes Is Intransitory in Nature Presents No Federal Question.

The decision of the St. Louis Court of Appeals for the State of Missouri determining the nature of the cause of action created by the California statutes applicable to this case is not a denial of full faith and credit to those statutes. In construing the California statutes, the St. Louis Court of Appeals held (R. 145):

> "We find on reading the California statutes that a remedy is prescribed, and that it must be pursued in a specifically designated California court; not in any court of any state, nor even in any Superior Court in California, but in a single Superior Court, namely, in 'the superior court which has acquired jurisdiction in probate of the estate of any decedent,' Sec. 14651, Rev. and Tax Code, or if there be no estate, the superior court of the county in which the decedent resided at the time of his death, Sec. 14652. By Sec. 14501, that specified court appoints an inheritance tax appraiser, who has 'all the powers of a referee of the superior court,' Sec. 14502. He files his report in the court, and the Clerk of the Superior Court gives notice 'by causing a notice to be posted at the courthouse in the county where the court holds its sessions' etc., Sec. 14508. Ultimately, the court enters its judgment or order fixing liability for the tax. It is needless to recite other provisions, showing that the statute prescribes a remedy in a specified California court. This calls for application of the rule of the last cited group of cases."

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also (R. 146):

> ". . . There is nothing in the Inheritance Tax Statute of California which indicates that the legislature intended to create a right on which the state could sue in a foreign state, instead of being confined to a remedy in a specified superior court of California. The statute under which the Attorney-General of California asserts power to sue is a general statute, part of the Political Code of California, when this suit was brought, as Section 3671 (e) thereof. It grants generally power to bring suit 'to collect taxes legally due this State,' without specific reference to inheritance taxes."

and further (R. 148):

> "In summation, we find that the new type of procedure here ingeniously attempted by the plaintiff cannot be accepted because of the principle established above, that when statutory right and remedy are intertwined, as here, the prescribed remedy must be followed, and being limited by the statutory prescription to a local court, the remedy cannot be pursued extraterritorially. The claim for inheritance tax as created in California is not truly transitory (regardless of whether it might conceivably have been made so) but has been localized by the requirement of California court procedure and California judgment."

What the St. Louis Court of Appeals did was to examine at length the applicable California statutes and to endeavor to find decisions of California courts interpreting those statutes. Having found no California decisions which in any way shed any light on the nature of the California cause of action, the St. Louis Court of Appeals proceeded to make its own determination as to the nature of the cause of action created by the California statutes.

This it was free to do and its decision in this regard will not be disturbed by this court. **Louisville & Nashville Railroad Company v. Melton,** 218 U. S. 36, 54 L. ed. 921, 30 S. Ct. 676; **Allen v. Allegheny Co.,** 196 U. S. 458, 49 L. ed. 551, 25 S. Ct. 311; **Banholzer v. New York Life Ins. Co.,** 178 U. S. 402, 44 L. ed. 1124, 20 S. Ct. 972; **Finney v. Guy,** 189 U. S. 335, 47 L. ed. 839, 23 S. Ct. 558.

Petitioner argues under Point I of its argument that California law provides a transitory cause of action for the assessment and collection of California inheritance taxes and argues under Point II that it is the duty of this court to examine the nature of the California cause of action and to correct the St. Louis Court of Appeals if that court erred. Petitioner's argument must be posited on the assumption that the full faith and credit clause of the federal constitution requires that the courts of Missouri interpret the California statutes here involved in such fashion that this court would approve the construction were it sitting as a part of the state judicial structure of Missouri. This would mean that this court would raise a corrective hand in every instance in which a state court construed the statute of another state in a fashion deemed to be to the detriment of the party invoking the full faith and credit clause.

In **Glenn v. Garth,** 147 U. S. 360, 368, 369, 370, 37 L. ed. 203, 206, 13 S. Ct. 350, this court disposed of similar contentions:

> "If we were to assume jurisdiction of this case, it is evident that the question submitted would be, not whether the decision of the New York court was against a right specially set up and claimed under the Constitution of the United States, or necessarily arising, but whether in that decision error intervened in the construction of the statutes of Virginia. If every time the courts of a state put a construction

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upon the statutes of another state, this court may be required to determine whether that construction was or was not correct, upon the ground that if it were concluded that the construction was incorrect, it would follow that the state courts had refused to give full faith and credit to the statutes involved, our jurisdiction would be enlarged in a manner never heretofore believed to have been contemplated."

* * * * * * *

"This record may be searched in vain for any proof that, as matter of fact, the public acts of Virginia had, by law or usage in Virginia, any other effect than was given them in New York; nor can the contention of counsel, that the Virginia statutes should be construed according to their views, be treated as the equivalent of the express assertion of a right arising under the Constitution or laws of the United States."

So also where the affected party argued specifically, as does Petitioner here, that the error of the state court had been demonstrated and that this court should correct it, this court held:

"It is earnestly argued that the court erred in its construction of the Illinois statute. We do not pass upon this question, deeming it to be outside of the limits of our jurisdiction; for it is settled that where, in a state court, the validity of an act of the legislature of another state is not in question, and the controversy turns merely upon its interpretation or construction, no question arises under the 'full faith and credit' clause of the Federal Constitution. . . ."

Western Life Indemnity Co. v. Rupp, 235 U. S. 261, 275, 59 L. ed. 220, 225, 35 S. Ct. 37.

See in addition such cases as **Louisville & Nashville Railroad Company v. Melton**, 218 U. S. 36, 54 L. ed. 921, 30

S. Ct. 676; **Allen v. Allegheny Co.**, 196 U. S. 458, 49 L. ed. 551, 25 S. Ct. 311; **Banholzer v. New York Life Ins. Co.**, 178 U. S. 402, 44 L. ed. 1124, 20 S. Ct. 972,; **Finney v. Guy**, 189 U. S. 335, 47 L. ed. 839, 23 S. Ct. 558.

II.

Inasmuch as the Decision of the St. Louis Court of Appeals Rests on the Ground, Among Others, That There Was No Competent Evidence Before the Missouri Courts From Which They Could Have Determined the Amount of Inheritance Taxes Allegedly Due California, This Court Will Not Attempt to Examine Other Grounds Which Might Possibly Involve Federal Questions.

At the trial of this cause Petitioner made no effort to have the Missouri court independently determine any of the facts necessary for the determination of the California inheritance tax, and the only question of fact actually litigated was that of domicile of the decedent, Mary Agnes Rogers. To support its allegations as to the assets of the estate, the beneficiaries thereof and their relationship to decedent, the interest and the value thereof received by each beneficiary, the expenditures made on behalf of the estate by the California Administrator, and such other facts as were necessary for the determination of the California inheritance tax, Petitioner, in the words of the St. Louis Court of Appeals:

> "... offered in evidence as its chief reliance in this case the June 24, 1947, judgment of its Superior Court (by a 'Court Commissioner' whose status and authority are not established in this record, but that issue is not before us) approving and confirming the report of its inheritance tax appraiser, finding that the market value of the property subject to inheritance

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tax is $98,152.27 and assessing and fixing the liabilities of named heirs (Exh. A); and the account and report of its public administrator and petition for discharge, nothing for distribution, with order of August 9, 1948, approving said account and granting said petition (Exh. B). Parenthetically, it might be noted that although a copy of the Report of the Inheritance Tax appraiser was attached to the petition as an exhibit, no authenticated copy of same was ever offered in evidence. However, some questions were asked concerning said report, whereby some of the contents thereof came into evidence.

"Without said Exhibit A and Exhibit B plaintiff would have been without evidence of the value of decedent's estate, especially her California assets and of the computation and assessment of inheritance tax. . . ." (R. 143, 144).

It must be remembered that the court in speaking as it did above, was answering the following question which it had put to itself:

"Thus, in effect, plaintiff contends that it here pursued, and was entitled to pursue a third procedure, viz., that it sued in Missouri to have defendant's liability for inheritance tax determined without relying on any prior California adjudication as a judgment, but using prior California court orders as evidence or proof of its case. May this be done?" (R. 143.)

Thus, the court found that the Respondent had failed to offer competent evidence in support of its cause of action. This finding is an adequate non-federal ground sufficient to support the decision, and therefore, this court will not go beyond that finding to seek out a possible federal question.

In **Klinger v. Missouri**, 13 Wall. (80 U. S.) 257, 263, 20 L. ed. 635, 637, the court said:

> "The rules which govern the action of this court in cases of this sort are well settled. Where it appears by the record that the judgment of the state court might have been based either upon a law which would raise a question of repugnancy to the Constitution, laws or treaties of the United States, or upon some other independent ground, and it appears that the court did, in fact, base its judgment on such independent ground, and not on the law raising the Federal question, this court will not take jurisdiction of the case, even though it might think the position of the state court an unsound one. But where it does not appear on which of the two grounds the judgment was based, then, if the independent ground on which it might have been based was a good and valid one, sufficient of itself to sustain the judgment, this court will not assume jurisdiction of the case; but if such independent ground was not a good and valid one, it will be presumed that the state court based its judgment on the law raising the Federal question, and this court will then take jurisdiction. . . ."

See also **Buck v. California**, 343 U. S. 99, 96 L. ed. 775, 72 S. Ct. 502; **Fox Film Corp. v. Muller**, 296 U. S. 207, 80 L. ed. 158, 56 S. Ct. 183; **Lynch v. New York ex rel. Pierson**, 293 U. S. 52, 79 L. ed. 191, 55 S. Ct. 16; **Allen v. Arguimbau**, 198 U. S. 149, 49 L. ed. 990, 25 S. Ct. 622.

III.

Petitioner Having Failed to Raise Any Constitutional Questions in Its Application for Transfer to the Supreme Court of Missouri, and Having Failed to Assert Any Specific Federal Rights or Questions in Its Original or Amended Pleadings in the Trial Court, Cannot Now Assert Such Rights or Raise Such Questions.

The Petitioner did not assert the federal questions, which it now raises, in its pleadings before the Trial Court; as a matter of fact, its pleadings seem to be based upon the theory of giving full faith and credit to a final judgment of a California court, not seeking full faith and credit for California statutes.

But, moreover, even if petitioner had raised a federal question in its initial pleadings, it must preserve that question throughout. An examination of Petitioner's Application for Transfer to the Supreme Court of Missouri (R. 154-156) discloses that Petitioner failed in any wise to call to the attention of the court any "violation of its rights under the United States Constitution" (Petitioner's Brief, pp. 15, 16). Review was sought by Petitioner in the Supreme Court of Missouri on the grounds that a conflict allegedly existed between the instant decision by the St. Louis Court of Appeals and an older decision of the St. Louis Court of Appeals, **State ex rel. Oklahoma Tax Commission v. Rodgers**, 238 Mo. App. 1115, 193 S. W. 2d 919, 165 A. L. R. 785. In this final and necessary step before the Supreme Court of Missouri the Petitioner failed to raise or preserve the questions which it now asserts before this court. Petitioner did not, as required by Missouri procedure, call specific attention to the federal questions which it now seeks to assert. Under the decided cases of Missouri, failure to specify federal questions precludes their consid-

eration by the highest State Court. **City of St. Louis v. Butler Co.**, 358 Mo. 1221, 319 S. W. 2d 372. Under these circumstances, this court will not consider any such question. **Parker v. Illinois**, 333 U. S. 571, 92 L. ed. 886, 68 S. Ct. 708; **Bailey v. Anderson**, 326 U. S. 203, 90 L. ed. 3, 66 S. Ct. 66; **Herndon v. Georgia**, 295 U. S. 441, 79 L. ed. 1530, 55 S. Ct. 794; **John v. Paullin**, 231 U. S. 583, 58 L. ed. 381, 34 S. Ct. 178.

IV.

Since the Original California Judgment Was Not Res Judicata or Binding Against Respondent, Its Admission in Evidence and Its Use as a Basis for a Judgment Against Respondent in a Missouri Court Would Be a Deprivation of Property Without Due Process of Law, Contrary to the Fourteenth Amendment to the Constitution of the United States.

Respondent, to succeed here, must be permitted to use as evidence the judgment of the California court determining the amount of inheritance taxes assessed against the Estate of Mary Agnes Rogers (R. 20, 21) or the report of the California Inheritance Tax Appraiser upon which the California judgment was purportedly based (R. 22-24), and an instrument purporting to be the first and final account and report and petition for discharge filed in the Superior Court of the State of California in and for the County of Los Angeles, In the Matter of the Estate of Mary Agnes Rogers, deceased (R. 39-41). Without the use of these documents as evidence Petitioner would have no proof either as to the amount of inheritance taxes which had purportedly been assessed against the estate or the amount which remained unpaid and presently due and owing. Absent such documents, there is no evidence to support any cause of action by Petitioner against Respondent (R. 144).

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The validity of the action taken by the California court, in so far as it affected persons and property before the California court, is not open to question, but neither the Respondent nor any of the defendants in the original proceeding in the St. Louis County Circuit Court were subject to the jurisdiction of the California courts, as Petitioner has admitted (R. 142). In so far as Respondent is concerned, the determination of facts by the California court was an ex parte determination and, therefore, not binding upon Respondent in any way.

Principles which would be dispositive of the case presently before this court were expressed in a case involving a somewhat comparable fact situation. **State of Minnesota v. Karp**, 84 Ohio App. 51, 60, 84 N. E. 2d 76, 80:

> "It seems to us that the amended petition in the case at bar discloses even more clearly that Minnesota had nothing within its borders upon which to exercise its power. The defendant at no time was a resident of the state. It is not alleged that he was ever in the state. No property was sequestered. The only suggested basis for the exercise of its sovereignty is that in 1940 he had received income from business transacted in Minnesota. Where or in what manner he received it is not shown. In this situation in 1944, the Commissioner of Taxation, an administrative officer, without personal service, assessed this tax which under the law was made prima facie evidence against the defendant. That, it seems to us, was an attempt by Minnesota to extend its sovereignty beyond its boundaries and control and bind the defendant. No such power resides in any state and an attempt to so extend its power is void and violates the Fourteenth Amendment to the Constitution of the United States. To give effect to such an attempt would be to deprive the defendant of property without due process of law.

"We are of the opinion that the amended petition fails to show a cause of action enforceable in Ohio."

Assuming an even stronger case for Petitioner, one in which probate proceedings had been instituted in Missouri in the Estate of Mary Agnes Rogers, as well as California proceedings, the evidence relied upon by petitioner could not have been used in an action against the Missouri administrator. **First National Bank v. Dowdy**, 175 Mo. App. 478, 482, 161 S. W. 859, 860:

"The rule is that, 'A judgment against an ancillary administrator furnishes no cause of action, and is not even evidence against the domiciliary executor or administrator' (2 Wharton on Conflict of Laws [3 Ed.], par. 629a, p. 1382; Stacey v. Thrasher, 6 Howard 44; Braithwaite v. Harvey, 27 L. R. A. 101). An unlimited number of cases might be cited upon this proposition, but those above cited will give the inquiring mind an opportunity to find the majority of the decisions touching this question. It appears that the authorities are uniform on this proposition."

To recognize the evidence sought to be introduced by Petitioner as determinative in Missouri courts as to Respondent of the amount of the California inheritance taxes and the amount thereof remaining unpaid, would do violence to the Fourteenth Amendment to the Constitution of the United States as a deprivation of property without due process of law. **McDonald v. Mabee**, 243 U. S. 90, 61 L. ed. 608, 37 S. Ct. 343, L. R. A. 1917 F 458; **Pennoyer v. Neff**, 95 U. S. 714, 24 L. ed. 565; **Dull v. Blackman**, 169 U. S. 243, 42 L. ed. 733, 18 S. Ct. 333; **Riley v. New York Trust Co.**, 315 U. S. 343, 86 L. ed. 885, 62 S. Ct. 614.

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V.

California Statutes Cannot Confer or Impose Upon Missouri Courts a Jurisdiction and a Mode of Procedure for the Determination and Assessment of California Inheritance Taxes Entirely Alien to the Missouri Code of Civil Procedure.

California has by statute created a system of inheritance taxation and by such statutes has provided the means for the assessment and collection of such taxes within California. That state has, therefore, created a right and provided a remedy for the enforcement of such right. This right and its concomitant remedy are novel in the sense that they are wholly unknown to the common law and are also novel in the sense that no court of general jurisdiction in the State of Missouri has the powers given by California statutes to California courts for the assessment and collection of such tax. This statutorily created cause of action is not one which the common law considered transitory, nor is it comparable to any cause of action generally recognized as transitory.

Under the California Revenue and Taxation Code, Section 14501 provided, during the period in question, that a specific California Court shall " . . . designate and appoint an inheritance tax appraiser to ascertain and submit a report to the court on the following:

(a) The clear market value of the property included in each transfer subject to this part from the decedent to any person sharing in the estate, whether the property transferred is in the estate or not.

(b) The amount of tax, if any, which is due and payable on each transfer.

(c) Such other facts regarding the tax as will assist the court in the determination of the tax."

Section 14502 of the Revenue and Taxation Code gives such appraiser " . . . all the powers of a referee of the Superior Court." Section 14506 provides that the appraiser file a written report with the Superior Court, setting forth the items specified in Section 14501. Section 14508 requires the Clerk of the Superior Court to give notice " . . . by causing a notice to be posted at the courthouse in the county where the court holds its sessions, and shall mail a copy of the notice to the Controller and to each person chargeable with any tax in the report who has appeared in the probate proceeding." Sections 14509 and 14511, respectively provide for confirmation of the report and for hearing of objections if such are filed.

But at the end of the California proceeding what was the net effect of an appraiser's report which had been confirmed by the Superior Court in which it was filed? It resulted in a judgment which California considered binding upon the property subject to the processes of the California court and upon the parties who were personally subject to the processes of the court. **Worchester County Trust Co. v. Riley**, 302 U. S. 292, 298, 82 L. ed. 268, 274, 58 S. Ct. 185; **In re Rath's Estate**, 10 Cal. 2d 399, 75 P. 2d 509, 115 A. L. R. 836; **In re Atwell's Estate**, 85 Cal. App. 2d 454, 193 P. 2d 519.

Thus, Petitioner began his Missouri proceeding with a California judgment binding upon such property as was before the California court and upon such persons who were before the California court, but certainly not binding as to any other property or as to anyone else. California has recognized that a California court cannot make its findings of fact binding on persons over whom it has no jurisdiction. **Rediker v. Rediker**, 35 Cal. 2d 796, 221 P. 2d 1, 20 A. L. R. 2d 1152.

Petitioner recognizes that it cannot rest its claim upon the California judgment as one entitled to full faith and

credit under the Federal Constitution (R. 142). Petitioner has also disclaimed the right to require the courts of Missouri to follow the procedural requirements of the California Inheritance Tax laws (R. 142, 143). Hence, Petitioner seeks to assert that the California statutes created a cause of action transitory in nature which this court will require the courts of Missouri to recognize and enforce. But then he is met with the fact that this is a situation wherein the right is coupled with a provision for a speedy remedy, which remedy alone must be employed. **Pollard v. Bailey,** 20 Wall. (87 U. S.) 520, 526, 22 L. ed. 376, 378; **Tennessee Coal, Iron and Railroad Co. v. George,** 233 U. S. 354, 359, 58 L. ed. 997, 999, 34 S. Ct. 587; **Galveston H. & S. A. R. Co. v. Wallace,** 223 U. S. 481, 490, 56 L. ed. 516, 522, 32 S. Ct. 205; **Stewart v. B. & O. R. Co.,** 168 U. S. 445, 42 L. ed. 537, 18 S. Ct. 105; **Fourth National Bank v. Francklyn,** 120 U. S. 747, 753, 30 L. ed. 825, 828, 7 S. Ct. 757; **Davis v. P. E. Harris & Co.,** 25 Wash. 2d 664, 171 P. 2d 1016; **Mosely v. Empire Gas & Fuel Company,** 313 Mo. 225, 245, 281 S. W. 762, 767, 768, 45 A. L. R. 1223.

The argument which petitioner is making, that it is entitled to succeed in having the courts of Missouri create a new method for the assessment and collection of California Inheritance Taxes, also appeared in a case decided in 1920 by the New York Court of Appeals, **State of Colorado v. Harbeck,** 232 N. Y. 71, 81, 133 N. E. 357, 358:

> " . . . Irregular assessments and unauthorized methods of collection may not be justified by pointing out difficulties in the practical application of the statute as written and appealing to the moral sense to meet the objection that no legal liability has been established against the beneficiaries. No substitute for the statutory method of collecting taxes, as such method is expressed or fairly implied, may be invoked either in the State of Colorado or elsewhere."

An analogous situation occurred in **Slater v. Mexican National Railroad Company**, 194 U. S. 120, 128, 48 L. ed. 903, 24 S. Ct. 581.

This is not a situation wherein the courts of Missouri are arbitrarily refusing to recognize and enforce a cause of action arising under the laws of one state while recognizing and enforcing a similar cause of action arising under the laws of another state, which seems to be the basis for Petitioner's argument on pages 28 and 29 of its brief. Cf. **First National Bank of Chicago v. United Air Lines**, 342 U. S. 396, 398, 96 L. ed. 441, 445, 72 S. Ct. 421.

Nor is this a situation wherein the courts of Missouri are arbitrarily refusing to recognize and enforce a cause of action arising under the laws of another state while recognizing and enforcing a similar cause of action arising under its own laws, which seems to be the basis for the argument made by Petitioner on page 21 of its brief. Cf. **Hughes v. Fetter**, 341 U. S. 609, 611, 95 L. ed. 1212, 1216, 71 S. Ct. 980.

Further, this is not a situation wherein the courts of Missouri are refusing access on the grounds of public policy of the State of Missouri, Cf. **Hughes v. Fetter**, supra; **Broderick v. Rosner**, 294 U. S. 629, 643, 79 L. ed. 1100, 1108, 55 S. Ct. 589, 100 A. L. R. 1133; nor yet a situation wherein a state has created a transitory cause of action and attempted to restrict its enforcement to its own courts. Cf. **Tennessee Coal, Iron and Railroad Co. v. George**, 233 U. S. 354, 360, 58 L. ed. 997, 1000, 34 S. Ct. 587; **Atchison, Topeka & Santa Fe Railway Company v. Sawers**, 213 U. S. 55, 70, 53 L. ed. 695, 702, 29 S. Ct. 397. See pages 20 and 21 of Petitioner's brief.

It has been argued by Petitioner on page 21 of its brief that this is a situation wherein both California and Mis-

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souri have created comparable causes of action for both have somewhat comparable inheritance tax statutes. This is true and serves to illustrate the point, for Missouri also requires that inheritance taxes be determined in a particular way, by particular procedures, under the supervision of a special Missouri court of limited jurisdiction. Chapter 145, R. S. Mo. 1949. See **State of Colorado v. Harbeck**, 232 N. Y. 71, 81, 133 N. E. 357, 358; **Slater v. Mexican National Railroad Company**, 194 U. S. 120, 128, 48 L. ed. 900, 903, 24 S. Ct. 581.

Petitioner has also argued that Missouri courts have refused petitioner equal protection of its laws and has denied to the citizens of California the privilege it extends to the citizens of Oklahoma in violation of Section 1 of the Fourteenth Amendment to the United States Constitution (Page 29, Petitioner's Brief). This argument is based upon Petitioner's contention that **State ex rel. Oklahoma Tax Commission v. Rodgers et al.**, 238 Mo. App. 1115, 193 S. W. 2d 919, 165 A. L. R. 785, is a case involving a cause of action comparable to the cause of action in the case at bar. This is a mistaken view of that case. The Oklahoma Tax Commission case came before the St. Louis Court of Appeals on an appeal from an order of the trial court sustaining a demurrer to the petition. In view of the demurrer, the following pleadings were admitted as facts: that Mr. and Mrs. Rodgers had been residents of Oklahoma during the various years involved, 1933 through 1936, inclusive; that they did file state income tax returns while they were residents of Oklahoma; that under the laws of Oklahoma and by virtue of the tax returns so filed, they became indebted to the state in the amounts designated by the Tax Commission acting on such returns; that the defendants had moved out of the state without paying the taxes for which they were then indebted to the state; that the state was pursuing them and suing them for that debt.

As a result, the only issue raised in the St. Louis Court of Appeals and decided in the Oklahoma Tax Commission case was whether the public policy of Missouri prohibited Missouri courts from entertaining causes of action based on the revenue laws of another state. The issues presently before the Supreme Court of the United States were not present in that case.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the Writ of Certiorari to the St. Louis Court of Appeals of the State of Missouri should be dismissed, or in the alternative, that the decision of the St. Louis Court of Appeals should be affirmed.

Respectfully submitted,

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HAROLD B. WILLE

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1954.

No. 32.

STATE OF CALIFORNIA on Relation of Edmund G. Brown, Attorney General, and Robert C. Kirkwood, State Controller,
Plaintiff and Petitioner,

vs.

ST. LOUIS UNION TRUST COMPANY, a Corporation Organized Under the Laws of the State of Missouri,
Defendant and Respondent.

On Writ of Certiorari to the St. Louis Court of Appeals of the State of Missouri.

ADDITIONAL MEMORANDUM OF RESPONDENT.

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ADDITIONAL MEMORANDUM OF RESPONDENT.

This Memorandum is presented in response to this Court's request made at the time of oral argument:

The Constitution of the State of Missouri adopted in 1945 provides in Article V, Section 3 thereof as follows:

"**Section 3. Jurisdiction of the supreme court.**— The supreme court shall have exclusive appellate jurisdiction in all cases involving the construction of

the Constitution of the United States or of this state, . . . "

Under the foregoing provision the Supreme Court has exclusive jurisdiction of all cases involving federal questions.

Article V, Section 11, of the Constitution of Missouri provides:

> "**Section 11. Venue of appeals—transfer to court having jurisdiction.**—In all proceedings reviewable on appeal by the supreme court or a court of appeals, appeals shall go direct to the court having jurisdiction thereof, but want of jurisdiction shall not be ground for dismissal, and the proceeding shall be transferred to the appellate court having jurisdiction thereof."

Under the foregoing provision, cases are automatically channeled to to the proper court.

Again under constitutional provisions the right of appeal is made absolute.

> "Article 5, **Section 22. Judicial review of action of administrative agencies—scope of review.**—All final decisions, findings, rules and orders of any administrative officer or body existing under the constitution or by law, which are judicial or quasijudicial and affect private rights, shall be subject to direct review by the courts as provided by law; and such review shall include the determination whether the same are authorized by law, and in cases in which a hearing is required by law, whether the same are supported by competent and substantial evidence upon the whole record."

Article V, Section 5 of the Constitution of Missouri lodges in the Supreme Court of Missouri the power to establish rules of practice and procedure for all courts of the state:

"Section 5. **Rules of practice and procedure—duty of supreme court—power of legislature.**—The supreme court may establish rules of practice and procedure for all courts. The rules shall not change substantive rights, or the law relating to evidence, the oral examination of witnesses, juries, the right of trial by jury, or the right of appeal. The court shall publish the rules and fix the day on which they take effect, but no rule shall take effect before six months after its publication. Any rule may be annulled or amended by a law limited to the purpose."

Under Article V, Section 10 of the Missouri Constitution, cases may be transferred from the Court of Appeals to the Supreme Court of Missouri, where (1) there is a dissent from the majority opinion and the dissenting member of the court certifies that he deems the opinion to be contrary to previous decisions of the supreme court or in conflict with any previous opinion of any of the courts of appeal, or (2) by order either (a) of the Court of Appeals, or (b) of the Supreme Court itself because of general interest or importance of the question involved in the case:

"**Section 10. Transfer of causes from courts of appeals to supreme court—scope of review.**—Cases pending in any court of appeals shall be transferred to the supreme court when any member of the court of appeals or any division thereof dissents from the majority opinion and certifies that he deems said opinion to be contrary to any previous decision of the supreme court or of any of the courts of appeals, and may, after opinion, be transferred to the supreme court by order of either the court of appeals or the supreme court because of the general interest or importance of a question involved in the case, or for the purpose of re-examining the existing law, or pursuant to supreme court rule. The supreme court may finally determine all causes coming to it from any court of

appeals, whether by certification, transfer or certiorari, the same as on original appeal."

Under the foregoing constitutional provisions, the Supreme Court adopted Rule 2.06, which rule was adopted and in force long before the filing of this cause. This rule reads in part as follows:

"Rulez of the Supreme Court—2.06:

"No case shall be transferred by order of the Supreme Court from a Court of Appeals unless a motion for rehearing has been filed and overruled in the Court of Appeals, and unless a motion for such transfer has been made to the Court of Appeals within the time for filing a motion for rehearing and denied by it, and unless an application for transfer is filed in the Supreme Court within 30 days after the denial of the motion for rehearing and motion for transfer by the Court of Appeals . . . ."

"The application . . . shall set out concisely the question of general interest or importance involved in the case, or why re-examination of the existing law is required, or wherein the Court of Appeals has failed or refused to follow the last controlling decision of the Supreme Court, concisely setting out the issue presented to the Court of Appeals and showing wherein and in what manner the alleged conflicting ruling arose and stating the citation of the controlling decision. The application may allege more than one ground, either concurrently or in the alternative. No application will be granted unless it shows that a question of general interest and importance is presented which has not previously been decided by the Supreme Court, or shows reasonable grounds for holding the existing law to be erroneous, or shows that the Court of Appeals has failed or refused to follow the last controlling decision of the Supreme Court . . . "

As pointed out in the original brief of Respondent (point 3, pages 21 and 22 of Respondent's Brief), it has long been judicially determined by the Supreme Court of Missouri that any constitutional question must not only be raised at the earliest possible opportunity but must be preserved throughout all phases of subsequent proceedings. The application for transfer filed in the Supreme Court preserves no constitutional question whatsoever, but on the contrary, based the application on the alleged conflict between the present case and **State ex rel. Oklahoma Tax Commission v. Rodgers**, 238 Mo. App. 115, 193 S. W. 2d 919, 165 A. L. R. 785.

No question involving the federal constitution was presented to the Supreme Court of Missouri by the petitioner in this case.

Respectfully submitted,

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FEBRUARY 7, 1955.

Decisions Per Curiam.

No. 32. CALIFORNIA EX REL. BROWN, ATTORNEY GENERAL, ET AL. *v.* ST. LOUIS UNION TRUST CO. Certiorari, 348 U. S. 808, to the St. Louis Court of Appeals of Missouri. Argued January 31, 1955. Decided February 7, 1955. *Per Curiam:* The writ of certiorari is dismissed as improvidently granted. *Walter H. Miller* argued the cause for petitioners. With him on the brief were *Ed-*

mund G. Brown, Attorney General of California, and *Elizabeth Miller*, Deputy Attorney General. *Milton Yawitz* argued the cause for respondent. With him on the brief was *Chas. D. Long*. Reported below: — Mo. App. —, 260 S. W. 2d 821.